

ACTIVITY REPORT 2005



Port Kennedy

Management Board Activity Report 2005



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In the text of this *Review* certain words are capitalised, indicating that they are formally defined terms in the *Port Kennedy Development Agreement Act 1992* and the associated State Agreement. Examples include Member (of the Port Kennedy Management Board) and Company (Western Australian Beach and Golf Resort Pty Ltd, or WABGR, and includes its appointed agent in Western Australia- Mirvac Fini).

Transmittal to the Minister

Hon Minister for Planning and Infrastructure

Dear Minister

I am pleased to submit the first *Port Kennedy Management Board's Activity Report*, following the Board's re-formation in late 2002.

While there is no statutory requirement of the Board to produce formal activity reports, the Board agreed that a yearly account of its performance and an associated review of the Port Kennedy Development project would be of particular benefit to your office. Annual Activity Reports should also help the Board and departmental servicing staff with initial background and on-going continuity in the future.

It is also suggested that the reports would be of general interest to the community if you authorised their public release. Additionally, such yearly performance and project reports will be a convenient medium for Board members to report back to their respective agencies and Ministers, or to the constituencies they represent.

This inaugural *Activity Report* covers a period of more than two years, commencing with assignment of development responsibility under the State Agreement to Western Australia Beach and Golf Resort Pty Ltd (WABGR). It is intended that subsequent reports will be submitted annually, and will cover the activities of the preceding financial year.

The Board looks forward to your authorisation for it to arrange the public release of this report for community information.

Yours sincerely



Chairperson

16 September 2005



Chairperson's Overview

It is with pleasure that, on behalf of the Port Kennedy Management Board, I submit this inaugural review, covering the past two years of the present Board's operations as well as some earlier background on the Port Kennedy Development. An indication that Board Members have taken their role diligently and the Board's functions seriously is the production of the Activity Report itself, along with initiatives mentioned under **Board Governance** and the proceedings recorded under **Board Involvement**.

The minutes record indicates that in the past, the Board has similarly operated diligently and effectively. As well as providing advice to the Minister on various aspects of the Port Kennedy Resort Project, it developed and adopted a *Code of Conduct*, was a participating partner in the development of the 1997 *Proposed Port Kennedy and Rockingham Parks Management Framework*, as well as other initiatives.

Summarising the Board's recent activities in such a Report has also enabled Members to better reflect on the Board's performance. It is pleasing to see that the current Board, in starting afresh, has been systematically acquiring basic background information, has participated in the recent review of the Project, and has been refining elements of its own governance needs for the task ahead.

The Board is fortunate that Mr Glen Finn has continued as Executive Officer to the Board, as this has brought some continuity of information from previous years. We value and greatly appreciate his services. It is envisaged that Mr Finn's support role, on top of his substantive position in the Department for Planning and Infrastructure (DPI), will become more demanding as the project gains momentum. Therefore the Board appreciates the supplementary staff support DPI has recently provided for meeting preparation and minute taking, and hopes that this can be continued.

Bill Thomas
Chairperson
16 September 2005

Summary of Board's Operation

Action undertaken by the Company/Government to date that involved the Board can be summarised as:

- Completion by the Company of some basic public infrastructure at Port Kennedy, which had been left in abeyance by the previous proponent.
- Revision by the Company of the previous Port Kennedy development project.
- Government review of the submitted revised project, and seeking Parliament's endorsement.

The period covered by this inaugural Report spans the period from WAGBR being assigned the Port Kennedy development rights, the State agreeing to a modified Project as proposed by the Company, and this being endorsed by State Parliament via formal variation to the State Agreement, and subsequent activity to 30 June 2005. A major role played by the Board during this period was as a 'sounding board' to the Company's modified Project proposals and its public consultation initiatives and outcomes.

In July 2004, the revised proposal for development at Port Kennedy was formally submitted to the State Government by WAGBR. Through DPI, the proposal was then

advertised for public comment. The Board considers that this satisfied the requirement at section 13 (4) of the *Port Kennedy Development Agreement Act 1992*; the Board is required to ensure that there is adequate public consultation where it is involved in matters that concern the Port Kennedy area's natural history values. The Board also provided written advice to the Minister for Planning and Infrastructure on the Company's proposal.

During this period, the Board also examined aspects of its governance needs and followed up on several priority areas.

Board Membership and Operation

Genesis to Board's Formation

While the Board first established on 8 February 1993, the genesis of the Board concept appears to have emerged out of negotiations during 1988 between the former State Planning Commission and the then proponent, the Port Kennedy Joint Venture (see **Development Background**). In considering a structure for a State Agreement, it was visualised that a statutory Board would need to be established to:

- act in a capacity similar to a local government authority;
- oversee the development taking place on the site;
- ensure the consistent management of 'Port Kennedy'; and
- be involved with a service and maintenance fund (proposed to be set aside from revenues generated by fees levied against leaseholders of the various site elements).

It was envisaged that the developer has two representatives on the Board, with the remaining Members from stakeholder agencies and the then Rockingham Shire. The functions of the Board, and its membership representation, were modified in 1992 following the outcomes of the environmental assessment in 1990. This had revealed the area's high natural history values and an additional need for their interim protection and management, while decisions were being made, on how much land was to be permanently withheld from development. As a consequence, Government fisheries and environment representation, and local community and conservation stakeholder interests were included in Board membership (Government transport and tourism representation were deleted from the original Board proposal).

Board Functions

The Board is constituted under provisions of the *Port Kennedy Development Agreement Act 1992*, as an advisory body to the Minister responsible for the Act (i.e. currently the Minister for Planning and Infrastructure). Its statutory functions under section 13(1) of the Act can be separated into four categories as follows:

- A. Those that relate to the development at Port Kennedy to be undertaken by the Company under the State Agreement [*section 13(1) (a), (b), (e), (f), (g), (h) and (i)*], which remain on-going.
- B. Those that generally relate to the protection and management of the Port Kennedy area's natural history values and environment since 1993 [*section 13(1) (c), (j) and (k)*] although a changing role for the Board has evolved since 1996.

- C. To facilitate further study of the geomorphological features of the Port Kennedy area, and to educate the public on the environmental importance of those features [section 13(1) (d)].
- D. At the Minister's request, to inquire into and advise the Minister on any matter referred to the Board concerning the Port Kennedy area [section 13(1) (l)].

With regard to 'category **B**' functions, this involved the Board's interim role of protecting and managing the area's natural history values while decisions were being made on the permanent allocation of land for conservation purposes. This was basically achieved in 1996, with the creation of the Port Kennedy Scientific Park, and its vesting in the former National Parks and Nature Conservation Authority (now WA Conservation Commission) with the Department of Conservation and Land Management (CALM) as manager. This interim role has substantially diminished, as the areas the responsibility related to have changed in status, viz

The former vacant Crown land involved (now referred to as 'unallocated Crown land', or UCL) in the Port Kennedy townsite has since largely been allocated (with specific managers) as

- *reserved land, involving foreshore recreation reserves, a related northern nature reserve and the Port Kennedy Scientific Park (set aside in 1996);*
- *freehold land in the Long Beach Estate residential development (granted late 1990s);*
- *leased land covering existing and proposed golf course development (executed in 2000); and*
- *roads and other service/subdivision infrastructure.*

[The only remaining UCL is land ear-marked for development under WABGR's Project...see further **Board Governance** and also **Appendix 1** for a list of the Board's functions]

Since the 2004 variation to the State Agreement, an original Stage 2 concept, covered by some of the provisions, no longer exists; it involved former UCL that has been wholly incorporated into the Port Kennedy Scientific Park since 1996.

Consequently, the Board's statutory functions over the review period (2003 – 2005) have largely been confined to the 'category **A**' functions. These specifically focus on the area's development and the Company's obligations. This will continue into the future, including an oversighting role (in partnership with the Department of Environment) concerning the Development's compliance with environmental requirements.

Board Membership

Part 4 and Schedule 2 of the *Port Kennedy Development Agreement Act* specifically relate to the Board. The Board consists of nine members who are appointed under section 12 of the Act. Since December 2002, Board membership has been as follows:

Chairman

Mr William Thomas 16/12/2002-30/11/2006

Two nominees of WABGR

Mr Darren Cooper (Mirvac Fini) 16/12/2002-30/11/2006

Ms Elizabeth Ronson (Mirvac Fini) 01/12/2004-30/11/2006

[Previously, Ms Martine White (Roberts Day) 16/12/2002-01/12/2004]

Nominee of the City of Rockingham

Cr Brian Sammels (Mayor) 18/08/2003-May 2005

(Resigned in May 2005, new nominee to be confirmed)

[Previously, Cr Chris Elliott (Mayor) 1996-11/4/2003]

Nominee of the Minister Responsible for the Land Administration Act

Mr Neil Parry (Crown land management, DPI) 15/12/2003-30/11/2006

[Previously, Ms Lyn Magro (DOLA) 16/12/2002-01/12/2003]

Nominee of the Minister responsible for the Conservation and Land Management Act

Mr Timothy Bowra (Regional Parks, CALM) 01/12/2004-30/11/2006

[Previously, Mr Paul Brown (Swan Coastal District, CALM) 16/12/2002-01/12/2002]

Nominee of the Minister responsible for the Fish Resources Management Act

Ms Jennifer Shaw (Fisheries Department) 16/12/2002-30/11/2006

A person representing the local community selected by the Minister for Planning and Infrastructure

Mr Roland Sharpe (Port Kennedy resident) 16/12/2002-30/11/2006

A person selected by the Minister for Planning and Infrastructure from three names submitted by the Conservation Council of Western Australia

Mr Graeme Rundle (CCWA Executive) 30/06/2000-30/11/2006

Board Operation

Operation of the Board was in abeyance for most of 2002 while the transfer of development responsibility under the Agreement, from the previous proponent Port Kennedy Resorts (PKR) to WABGR, was under negotiation. Most of the Board membership also changed at this time, with new appointments generally commencing as at 16 December 2002.

During the 30 months from the beginning of 2003 to 30 June 2005, the Board met on 17 occasions, bi-monthly on average and usually in the region at the City of Rockingham's administrative centre. During this period, the Board made a familiarisation visit to the Development Area. Various Board members have also participated in other visits, meetings and workshops organised by the developer's agent, Mirvac Fini, and by consultants engaged by Mirvac Fini.

The Board has no staff or budget allocation of its own. It is, however, serviced by DPI through the assignment of an Executive Officer, Mr Glen Finn. Recently Mr Finn has been provided with an assistant to help with Board meetings. Within the Department, budget allocations are provided for Board fees and expenses, and an additional Department budget has been established to administer the Port Kennedy Development. The latter will also enable the provision of technical help to the Board when development matters are referred to it.

Comment on the Board's functions is made below under the following headings:

- **Board Governance**
- **Board Involvement**
- **The Year Ahead**

A listing of the *Board* occurs at the Department of the Premier and Cabinet website, www.dpc.wa.gov.au, under *Get Involved*.

- Click on BOARDS WA
- Click on FIND A BOARD/COMMITTEE
- Search for PORT KENNEDY MANAGEMENT BOARD
- Click on PORT KENNEDY MANAGEMENT BOARD to obtain detailed information

Board Governance

General

A number of governance matters were raised mid-year in 2004, and it was revealed that some had been dealt in the past. However, this continuity of information was not due to the existence of an efficient database or administrative system servicing the Board. The Board has been in existence for over a decade now, with a complete change of personnel (both on the Board itself and agency servicing staff) progressively occurring during the two and a half years between April 2000 and December 2002. This past knowledge had been random and relied upon the present Executive Officer and a current Board Member perusing past records out of general interest.

The Board is acutely aware that delivery of the revised Development Project is likely to take another decade before it is completed, during that time it is very probable that once again there will be a complete turnover of Board membership and replacement of agency staff that directly service the Board. Partly as a consequence of this, and also because of most Members having a lack of detailed knowledge of long-standing environmental conditions attached to the Project, in June the Board agreed that it should arrange a formal induction session for all Members. This was eventually arranged for February 2005, with the intent being to ensure that the Board was appropriately pursuing all of its statutory functions.

Review of Past Initiatives

The Board's membership contact information sheet was revised and re-issued. This time it was endorsed with a prominent confidentiality notice tied back to Item 4.2 of the Boards *Code of Conduct*, to obviate its release to potential lobbyists. [For initiatives concerning the consideration of communication with the community, see further, **The Year Ahead**].

The Board adopted a *Code of Conduct* at its meeting of 14 April 2000. It is based on the Western Australian Public Sector Code of Ethics current at the time, and follows a generic format developed by the Public Sector Management Office. Copies were issued by the Executive Officer to Members following membership re-instatement in December 2002.

Not covered in the *Code of Conduct* is specific guidance on the public release of the Board's Minutes. Arising out of a known public interest in minuted proceedings of the Board, a policy review was made in August 2004, and it was resolved to reaffirm the Board's position that the Minutes, or extracts of the Minutes, will not be released to the public except under the provisions of the *Freedom of Information Act 1992* (FOI Act). In

turn, Item 4.5 of the *Code of Conduct* requires the Board to comply with the letter and spirit of the FOI Act. The wording is such that it would be improper for unconfirmed Minutes to be provided, and that any related confirmed amendments would need to be provided.

At its June meeting, 1996 advice from the State Solicitor's Office regarding pecuniary interests of Board Members and the potential for conflicts of interests was tabled for consideration. Some Board Members tabled other relevant legal advice. When collectively viewed, there were points in the tabled opinions that conflicted. Bearing in mind that Board representation is largely stakeholder-based, it was generally agreed that the Board would largely fall back upon Item 5 of its *Code of Conduct*, dealing with conflict of interest. Specifically, the Board agreed that any Member who has a direct pecuniary interest in any matter before the Board:

- is obliged to declare that interest, and excuse themselves from voting on the matter; and
- Members need not absent themselves from discussion on such matters as it is considered unreasonable and not in the best interests of progressing the Project.

Also at the June 1996 meeting, correspondence was tabled that recorded the Board reviewed its statutory functions in September 1997, and resolved that certain responsibilities should be repealed on the basis that, for various reasons, they were redundant. A new co-ordination function, however, was deemed appropriate as an addition, to reflect the Board's changing role. These proposals were recommended to the Minister, who noted them and indicated guidance by way of concurrence, without arranging statutory change. The Board had subsequently adopted the informal changes and had been guided by them in its activities.

Induction Workshop

This year (2005), the Board's February meeting comprised a full day induction session for its Members, facilitated by guest presenters and the Executive Officer. The main information items were:

- Project Environmental Conditions- compliance and reporting.
- Water Systems- a background on groundwater and related matters.
- Review of Board Functions- including consideration of outcomes from an earlier review in 1997. (See further below Review of Functions)
- Deed of Variation to the Principal Agreement- required activities.
- WABGR's Development Program- an outline.

The day culminated with all Members taking part in a discussion on Board activity and business planning.

Review of Functions

Following the creation of the Port Kennedy Scientific Park (and other conservation and beach recreation reserves) in 1996, in 1997 the Board reviewed its statutory functions (see **Appendix 1** for a full list of the Board's functions) and made suggestions to the Minister of the day. These were that:

1. Functions relating to temporary protection and management needs for the Port Kennedy area's natural history values were no longer relevant [*section 13(1)- functions (c), (j) and (k)*].
2. Functions relating to the Project's start-up were *also* no longer relevant [*section 13(1)- functions (a) and (b)*].

3. The Board's changing role should now involve it in the additional (statutory) function of *coordinating the activities of the developers and Government agencies involved in the management of the Port Kennedy area.*

While noted by the Minister of the day, no formal action was initiated to change the Board's statutory functions. It is understood, however, that the Board of that time adopted and practiced the proposals as a matter of policy.

With regard to the functions listed at **1** above, earlier in this Report (under **Board Membership and Operation- Board Functions**) it is pointed out that they were intended to enable a temporary protective and management role of the Board over the Port Kennedy area's natural history values. These functions are now largely inoperable due to the deletion of Stage 2 area from the Development and the conversion of most of the unallocated Crown land to specific purposes. However, under the revised Project, part of the golf course lease is to be converted to an additional conservation area and one of these 'temporary provisions' [section 13(1) (c)] is likely to be invoked again. Similarly, the repackaging of the Port Kennedy Development under the recent variation to the State Agreement probably re-introduces relevance to the functions listed at item **2** above.

At its February 2005 meeting, the Board re-assessed the relevance of its statutory functions: it concluded that, while several functions were significantly diminished (eg by virtue of the Port Kennedy Scientific Park being created and its on-going management thus becoming CALM's responsibility), most remained fully relevant and the retention of all was still appropriate. Consistent with State Government desire to minimise overlap and duplication in the administration of development projects, the Board also decided not to duplicate the monitoring activities of the Department of Environment [through section 13(1) (h)], but rather enlist its cooperation in keeping the Board informed of the Department's own monitoring/auditing of the Project. [See **Appendix 1** for a list of the Board's statutory functions]

Conclusion

Since the Port Kennedy Development is now back on track and likely take a decade to complete, at its final meeting for the reporting period (June 2005) the Board decided that it should now provide yearly "reports" on the Development to the Minister. This is the first of such "reports", and is a catch-up that covers the past two and a half years. Future reports are expected to be briefer but just as informative in their content.

The meeting also considered the worth of developing existing departmental (DPI) website information on the Port Kennedy Development into a dedicated webpage for the Project. It was envisaged that periodic updates for community interest would be involved, perhaps with linkages to other informative sites. This concept is to be explored by the Executive Officer, particularly to ascertain if it can be accommodated within existing resources and protocols.

Other housekeeping and governance matters canvassed at this last meeting for the period are mentioned toward the end of this report, under **The Year Ahead**.

Development Background

The development site is located at the southern end of Warnbro Sound, within the City of Rockingham. Here, land had long ago been gazetted as the Port Kennedy Townsite but remained undeveloped and with much of it in private ownership. The remote and roadless environs of the locality had been used for several decades as an artillery practice area, followed by 'squatter' shacks being erected in the Becher Point area after World War II.

Apart from other State Government development proposals in the past, the townsite had long been ear-marked for some time by planning authorities for development as a regional recreation and leisure centre. In the 1970s, the former Metropolitan Region Planning Authority (MRPA) produced a conceptual development for the whole site that was based around a marina, beaches, golf courses and other sport and leisure facilities, and a range of accommodation sites. During the early 1980s, the State Government acquired the private land in the townsite and adjoining Larkhill area.



At this time, the Environmental Protection Authority's Conservation Through Reserves Committee (CTRC) produced its System 6 report for more conservation reserves in the region. This included the Port Kennedy environs and in the offshore marine area. In 1983, these became recommendations by the Environmental Protection Authority to the State Government and were endorsed in principle.

The information set out below is largely derived from the citations contained in the original *Port Kennedy Development Project Agreement*, 1992, heading the *Deed of Covenant*, 2002, and the *Deed of Variation* that was tabled in State Parliament in 2004:

Port Kennedy Joint Venture

1. *While owning the land, the Government of the day had inadequate finances to fund provision of the marina, accommodation and other recreation and leisure infrastructure.*
2. *In March 1986 the State, through its State Planning Commission, called for expressions of interest in developing Crown land within the Port Kennedy Townsite (the project Development Area), including a marina and other facilities, in accordance with guidelines contained in a detailed Development Brief. Subsequently, later in 1986, a submission from Fleuris Pty Ltd was accepted, this enabled the proponent to proceed with feasibility studies during 1987. In*

November 1987 the Port Kennedy Joint Venture (a 50/50 partnership between Fleuris Pty Ltd and the Government's Western Australian Development Corporation) was formed; in turn, the Joint Venture subsequently submitted a development proposal that was accepted by the State.



Original Development Proposal

3. This triggered a formal environmental assessment of the Joint Venture's development proposals, and in 1988 an Environmental Review and Management Programme (ERMP) was submitted to the Environmental Protection Authority (EPA). The process revealed the area's special geomorphic values and associated ecological community. The EPA also took a cautious line over proposals for the marina siting and design, and its potential to impact upon dynamic coastal processes [EPA bulletin 398, September 1989]. These aspects were reflected in the resultant Ministerial Conditions issued in August 1990 by the Minister for the Environment [Ministerial Statement No. 105]

4. Some of the islands and stacks in the Warnbro Sound/Shoalwater Bay area have been reserved for conservation for some time, including Penguin Island. In 1983, in its System 6 Report (System 6 'Red Book'), the EPA proposed that the marine waters of the area also become a conservation area. The Shoalwater Islands Marine Park was declared in January 1990; the site of the proposed marina at Port Kennedy was, however, excluded from the Marine Park. A management plan for the island Nature Reserves and Penguin Island ('Shoalwater Islands') was approved in October 1992. While a draft management plan for the Shoalwater Islands Marine Park was released for public comment three years later in October 1995, a decade on this has yet to be finalised!

Fleuris Pty Ltd

5. *Shortly after forming the partnership, the Western Australian Development Corporation withdrew from the joint venture, leaving Fleuris as the sole proponent of the development project. On 10 February 1992, the State entered into the Port Kennedy Development Project Agreement (the "Principal Agreement") with Fleuris. This was ratified on 24 December 1992, when the Port Kennedy Development Agreement Act 1992 ("the Ratification Act") came into effect. The Act also created the Port Kennedy Management Board (PKMB).*
6. *The environmental conditions and ratified Agreement identified the southern part of the original Development Area as being environmentally significant. This became a deferred Stage 2 of the project while it was being determined by the State what part needed to be permanently retained for conservation. The Board's 'management' role largely related to an interim management responsibility for flora and fauna in Stage 2, while other authorities determined what parts could be released for development; and promoting the Port Kennedy area's acknowledged national and international geomorphic values, including in the Stage 1 area.*
7. *A change of State Government in 1993 subsequently resulted in the transformation of the State Planning Commission into the WA Planning Commission (WAPC); dissolution of the Western Australian Development Corporation, with its Larkhill land holdings being transferred to the WAPC. The new Government also came into office with a policy to create a Port Kennedy Scientific Park within the State Agreement area.*
8. *Ministerial Condition 14 in Ministerial Statement 105 called for a review of the conservation value of high dunes in the northern extremity of the site (ear-marked for conservation, as a 'Northern Conservation Zone'), and consideration of part of it being exchanged for land ear-marked for development (but of higher conservation value) that could be included in the Scientific Park (a 'Southern Conservation Zone'). Action was initiated on this in late 1993 and a proposal to change the project's environmental conditions under section 46 of the EP Act. The land swap proposal was endorsed by the EPA [EPA Bulletin 734, February 1994] and authorised by the Minister for Environment in August 1994 [Ministerial Statement No. 357].*
9. *The State Agreement requires the project works to be pre-funded by the Company. Apparently to deal with this, refinancing of the project was arranged by Fleuris through the creation of another company and transfer of ownership. By Sale of Interest Deed dated 14 September 1994, PKR Pty Ltd (PKR) took an assignment of all Fleuris's rights and obligations etc. With the responsible Minister's concurrence, this took effect from 27 March 1995, at which time PKR became "the Company" under the Principal Agreement.*

Port Kennedy Resorts Pty Ltd

10. *During the Fleuris era, much of the necessary environmental clearances required under the ERMP Ministerial Conditions were initiated, eg "Geomorphic Site Management Plan" (completed July 1994), "Conservation Management Plan" (completed August 1994), "Groundwater Monitoring and Management Programme" (completed August 1994). Acceptance of these was approved by the Minister for Environment on 2 September 1994. The Company, however,*

was required to conduct further studies associated with the proposed marina site, before the marina development was to be separately assessed by the EPA.

11. On 28 March 1995, the State and PKR entered into an agreement to vary the Principal Agreement by amending clause 20 and adding clause 24A ("the Variation Agreement"). This was tabled in both Houses of State Parliament as required, and became effective on 24 May 1995. These changes related to assignment and default provisions.
12. In April 1995, PKR submitted to the State its proposals for carrying out of the "Project" pursuant to clause 4 of the varied Agreement ("the State Agreement"). The PKR proposals were contained in the Port Kennedy Regional Recreation Centre Approval Document, which divided development into 8 separate phases. Three of these phases were conditionally approved by the State on 19 April 1995, pursuant to clause 5 of the State Agreement. These involved provision of service headworks, a staged dual carriageway of Port Kennedy Drive and entry statement; basic beach recreation facilities, parking facilities, cycleways and footpaths; two 18-hole golf courses with clubhouse facilities; beach rental apartment block and units, and over 180 villa lots. A substantial part of these project works (including the Long Beach Estate development) were complete or well on the way to completion toward the end of 1996.
13. On 26 September 1996, the State approved phases 4 to 8 (the remainder of the Project covered by the Approvals Document, including the marina development), but subject to alterations being made to the Approvals Document. Further proposals requested by PKR under clause 6 of the State Agreement were conditionally approved. The alterations were subsequently formalised on 10 February 1997 by the parties executing an Addendum to Approvals Document.
14. Provisions in the Ratification Act initially cancelled all reserves and road dedications in the area. Other provisions then provided for new road and pedestrian way dedications to come under the care, control and responsibility of the City of Rockingham. Similarly, under section 8 of the Act any new foreshore reserves created are to have the purpose of "public recreation", be Class 'C' and be vested in the City of Rockingham; while nature reserves are to have the purpose of "conservation of flora and fauna" and be Class 'A' [nature reserves are automatically vested in the Conservation Commission and managed by CALM, under provisions of the Conservation and Land Management Act]. In accordance with the Government's 1993 election policy, in 1996 the Port Kennedy Scientific Park (a nature reserve) was gazetted in two parts, and included the whole of the Project's Stage 2 and some land beyond (in 2000, the two contiguous Class 'A' reserves were amalgamated into a single reserve). Class 'C' foreshore reserves were also gazetted along the site's Warnbro Sound beach, excepting in the vicinity of the proposed marina. The name "Port Kennedy Scientific Park" was formally assigned to Class 'A' nature reserve no.44077 on 22 May 2000. [See also item 16 below, concerning the Rockingham Lakes Regional Park]
15. To enable the development of a bore water supply for commencing construction of the golf courses, PKR applied for the necessary groundwater abstraction licence from the Water and Rivers Commission in February 1996. A licence was granted in May (No. 0056385), but with an allocation sufficient for only one golf course. An additional allocation for a second golf course was to be dependent on several factors, including the monitored performance of groundwater management relating to the first.

16. In 1983, in its System 6 Report (System 6 'Red Book'), the EPA proposed that some existing and recommended conservation areas become Regional Parks. In 1989, the State Government decided that responsibility for Regional Park management would largely rest with CALM. An inter-agency Regional Parks Taskforce reported in 1990 on the administration, planning and management of Region Open Space being assembled under town planning initiatives. In 1993, the EPA's Red Book Status Report described the transformation of Regional Parks from concept to reality as being difficult because of the range of land tenure involved and the funding required for continual management of Regional Parks. Finally, in June 1997, the State Government announced the establishment and co-ordination of management of eight metropolitan Regional Parks that were to be progressively transferred to CALM, on behalf of the now Conservation Commission, along with interim funding for management plan development and some basic facilities. The Rockingham Lakes Regional Park was one of those listed. In the meantime, the WAPC, CALM, PKMB and the City of Rockingham joined forces and commissioned a report to develop a Management Framework for the main System 6 conservation areas in the Rockingham district, including the Port Kennedy Scientific Park. A report on a proposed Management Framework was publicly released in August 1997. It provided a concept for the Rockingham Lakes Regional Park, and endorsed a direct linkage for the Scientific Park (via the Larkhill area) then being established by the WAPC through statutory planning processes. A draft management plan for the Regional Park (which includes the Port Kennedy Scientific Park) was released for public comment by CALM in 2003, and a final version is now nearing completion. [See also item 14 above, concerning the Scientific Park]
17. By mid 1999, service headworks, first carriageway of Port Kennedy Drive/temporary entry statement, basic beach recreation and car parking facilities, and a single golf course and the Long Beach Estate rental apartment block had been constructed (but not necessarily completed in all respects). On 1 July 1999, with the assistance of consultant quantity surveyors, the State confirmed that PKR had spent a total of \$14 237 980 on Project works. Clause 10 of the original State Agreement details the developer's land entitlement of Crown land to be granted in freehold for progressively completed works. The parties had already agreed that the intention of clause 10 was for Crown land to be granted on a gross basis and that provision must be made by PKR for subdivision roads.
18. On 17 June 1999, the Valuer Generals Office assessed the value of Crown land granted by the State to PKR to that date as \$5 460 000. On the 19 August 1999, the State agreed to release a further \$1 515 000 in Crown land to PKR. The total amount of land granted by the State to PKR pursuant to clause 10 amounted to 2.4989 ha.
19. On 1 June 2000, the State granted Crown Lease No. H500732 ("the Crown Lease") to PKR pursuant to clause 9 of the State Agreement for the golf club component of the Project (including the undeveloped second golf course). On the same date, PKR granted Sub-Lease H501565 ("the Sub-Lease") to The Golf Club (WA) Ltd ("the Golf Club") for part of the Crown Lease area to develop a 'private' 18-hole golf course. Both leases place obligations on PKR and the Golf Club with respect to construction of Project works within the Crown Lease area. The groundwater licence applying to the bore field was renewed and transferred to the Golf Club in May 2001 (No. GWL 106319).



Existing Golf Course

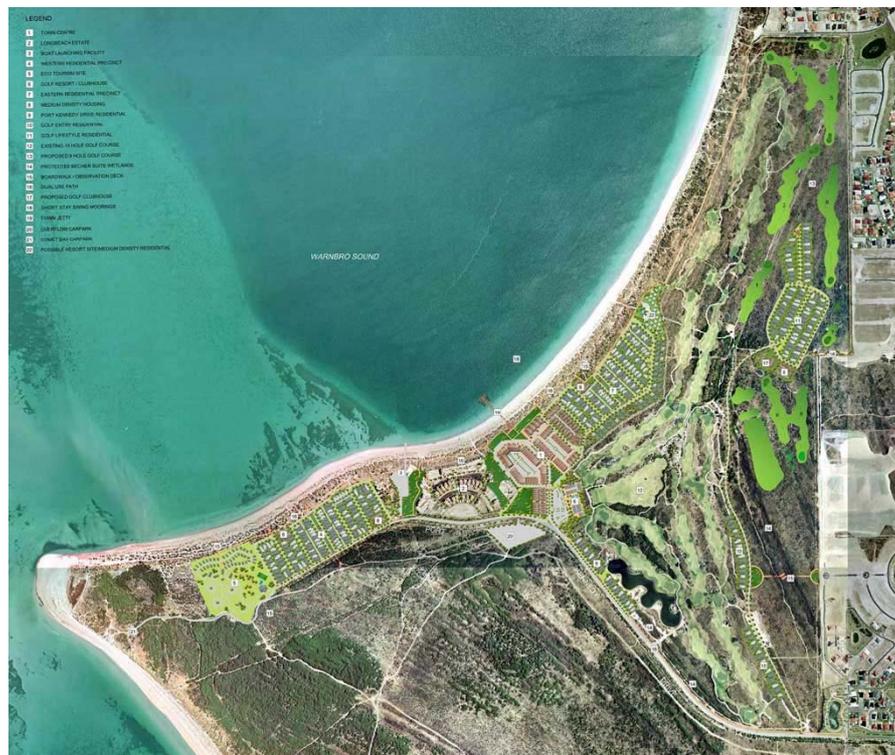
- 20.** *Around 1998 it was apparent that PKR was running into financial difficulties for continuing the Project, and became involved in Supreme Court proceedings with its financier, Pac-Asia. PKR representatives stopped attending meetings of the Board from December 1999 and the State commissioned a Project review from an independent consultant and sought legal advice on the situation. In November 2000, the Supreme Court wound up Fleuris Pty Ltd, PKR's parent company and PKR itself was placed under voluntary administration. On 13 November 2000, pursuant to clause 24 of the State Agreement, the State issued a Notice of Default on PKR.*
- 21.** *In 2001, the incoming State Government considered options for the project and on 13 November 2001 the State became entitled to terminate the State Agreement. After receiving and considering proposals from various interested developers, PKR's Administrators formally requested that the project development rights be assigned to Western Australian Beach and Golf Resort Pty Ltd (WABGR), a wholly owned and Australian registered subsidiary of Pac Asia Holdings Pte Ltd (PKR's principal financier). Pursuant to clause 24A of the State Agreement, the State requested PKR to assign all of its responsibilities and entitlements concerning the Project to WABGR, which PKR agreed to do.*

Western Australian Beach and Golf Resort Pty Ltd

- 22.** *This transfer was facilitated through a Sale of Interest Deed dated 15 July 2002. A Deed of Covenant between the State and WABGR was executed on 21 August 2002, formalising State acceptance of this assignment to WABGR and acknowledging the company intended to submit proposed changes to the Project's concepts for State concurrence. Thus WABGR effectively became "the Company" under the State Agreement on 21 August 2002. As a condition precedent to that deed, and by way of security for the due performance of WABGR's obligation to carry out and complete Priority Public Works (including unfinished Project commitments needed to facilitate better public use of the area), the company procured a \$1 million Bank Guarantee in favour of the State.*
- 23.** *In September 2002, the Minister for Planning and Infrastructure established a Tourism Accommodation Taskforce, chaired by the Hon Adele Farina MLC. Its basic task was to examine and report on issues surrounding trends where developments were blending residential and tourism accommodation. A concern existed in planning and tourism spheres, for example, of the potential for permanent residential use to swallow-up accommodation intended for short-stay tourists. The Taskforce report was released in August 2003 and contains a number of important recommendations concerning developments with tourist accommodation.*
- 24.** *As prescribed in the Sale of Interest Deed, Mirvac Fini, has been engaged by WABGR as the Project Manager. Mirvac Fini is a leading property developer in the State. Two of Mirvac Fini's senior staff are currently appointed to the Board, as nominees of WABGR (see **Board Membership and Operation**).*
- 25.** *To ensure the most sustainable outcomes are achieved for the Project, Mirvac Fini developed the Revised Development Plan through an intensive public consultation process. The consultation process was designed by Sarkissian Associates Planners Pty Ltd and was undertaken involving members of the community and Project stakeholders. The consultation was undertaken over the course of approximately 18 months (2003-2004) and included:*
- *Shopping centre displays*
 - *Consultation with the community (questionnaire survey)*
 - *Scientific workshops (attended by science experts and knowledgeable stakeholders)*
 - *Community days*
 - *A 'Speak Out'*
 - *Consultation with children*
 - *Public advertising through a number of different mediums*

In April 2004, DPI wrote to stakeholder agencies and groups seeking comment on WABGR's Revised Development Plan. Responses were considered by the Minister (along with input from the Chair of the Tourism Accommodation Taskforce; see item 23 above) and discussed these with the proponent. In July 2004, WABGR's proposed Revised Development Plan was submitted to the State for its acceptance. With some minor refinements, the Revised Development Plan was then released for public comment over a four week period during August 2004. On 19 October 2004, the State Government announced its approval of the revised Project.

- 26.** *In accordance with provisions in the Deed of Covenant, and clause 21 of the State Agreement, a Deed of Variation was tabled by the State in both Houses of State Parliament for a required 12 sitting days. The tabled variation successfully survived disallowance challenge in each House, to become effective on 18 November 2004. In the meantime, Mirvac Fini initiated discussion with various authorities (such as the Water Corporation, EPA, and CALM) to obtain necessary authorisations to proceed with various Project works.*
- 27.** *Changes to the State Agreement included deletion of the Stage 2 area (now wholly included in the Port Kennedy Scientific Park); an amended Development Plan; complementary amendment of the Land Tenure Plan and related Development Plan Text; and inclusion of a Development Staging Plan. The arrangement for the State allocating Crown land as freehold grants to WABGR, in exchange for completed Public Works, has also been changed.*



Revised Development Plan

Board Involvement

2003

Because the Port Kennedy Development Project had effectively stalled when the developer, PKR, was unable to continue and went into default (item 20, **Development Background**, above), the Board drifted into abeyance. During 2002, the terms of appointment of Board Members lapsed; the Minister did not reinstate its membership until December 16 2002, following the transfer of responsibility for the Project from PKR to WABGR on August 21. Membership of the 'new' Board included representatives of the new Project developer, WABGR.

The Deed of Covenant between the State and WABGR called for the completion of *Priority Works* (item 22, **Development Background**, above), and initial meetings of the

Board over the next 30 months included briefings on progress being made. Throughout the remainder of 2003, Board meetings largely revolved around WABGR's review of the original Project and its reporting on the re-establishment of formal compliance with environmental conditions that are attached to the Project (items 3 and 8, **Development Background**, above). The latter had lapsed with the collapse of the previous developer, PKR.



Prior to WABGR taking conceptual proposals into a programme of public forums during 2003, for obtaining community feedback, the company's Project review concepts were actively discussed at meetings of the Board. A Position Paper from the Conservation Council of WA, on the *Port Kennedy Environs* (November 2003) and which opposed some of the development concepts, was also tabled and discussed. The Board agreed that it was useful to have a clear understanding of the Conservation Council's position.

Board Member, Graeme Rundle discussing the proposed Development Plan at a community workshop

During 2003, the Board made a formal visit to the Port Kennedy site. A briefing was also arranged on the then recently released report by the government's Tourist Accommodation Taskforce (item 23, **Development Background**, above). Additionally, in their personal capacities, a number of Members attended some of the numerous community meetings, site inspections and technical workshops that had been arranged by WABGR. Copies of the 1997 report titled, "Proposed Port Kennedy and Rockingham Parks Management Framework" (item 16, **Development Background**, above) was issued to each Member during the year.

2004

The year saw the finalisation by WABGR of its revision of the Project, its formal submission to the State, a formal public release and comment period, and formal approval by the State Government with Parliament's concurrence.

Early in the year, the Company advised the Board that its draft revision of the Project was close to finalisation. Details were tabled and there was active discussion regarding them at Board meetings. Prior to a formal *Revised Development Plan* being submitted to the State, in mid-year WABGR briefed the Board on the detail of the numerous facility items the Plan encompassed.

While the *Revised Development Plan* was under consideration by the Government, Board discussion during the latter half of the year tended to focus on some unresolved and/or contentious issues being pursued by the Company, eg:

- location of boat launching ramp;
- proposed visitor access to Comet Bay, across the Scientific Park (item 13, **Development Background**, above);
- protection of probable geomorphic values in the Bridport Point area; and

- development of a second golf course.

Feedback on State Government consideration of the submitted revised Plan, as well as comment from agencies and stakeholders, were also topics at Board meetings.

A public release of the revised Plan during August was arranged by the Minister through the Department for Planning and Infrastructure; the resultant responses were assessed and a presentation of a final revised Plan was drafted for transmittal to Cabinet. The Board considered the draft Cabinet presentation in September. Because of time constraints relating to the ultimate need to have details of the revised Project tabled in Parliament, the several points raised by the Board were referred back to the Department informally, via the Board's Executive Officer. The Board's deliberation was recorded in its Minutes and confirmed in October.



Minister for Planning and Infrastructure, Alannah McTiernan, Member for Peel, Norm Marlborough and Darren Cooper from Mirvac Fini discussing the proposed Development Plan

At the Board's October meeting, it was reported that the presentation had been finalised and forwarded to Cabinet. It was thus resolved that the Board write, informing the Minister that:

- The Board did not have the opportunity to view a final draft of the Cabinet Submission prior to it being forwarded to the Minister.
- The EPA's position was not available to the Board prior to the referral of the Cabinet Submission, and that the Board's preference would be for the water-based elements of the Project to be referred separately to the EPA for assessment.
- The Board supports the Cabinet Submission in principle, and fully endorses the recommendations put forward.

[WABGR's representatives on the Board abstained from voting on these resolutions]

During mid-year, the Board took stock of some 'governance' issues and these are reported on under **Board Governance** above. Some 'housekeeping' issues were also raised and dealt with. These include:

- In lieu of numerous "dot-points" occurring in Minutes, (when appropriate) points are to be specifically numbered. This is intended to provide more effective referencing for any future citation needs.
- Arrangements were made through WABGR's agent, Mirvac Fini, for the provision of a set of A3 size (1:12 000 scale) coloured maps of the Development Area, comprising existing and indicative ultimate land tenures, and existing and indicative ultimate MRS 'zoning'. Along with the Development Plan of similar scale within the 2004 Deed of Variation, these are visualised to be among the Board's primary references to aid it at future meetings.

2005 (to June 30th)

Three Board meetings were held in the first half of 2005 (the end of this reporting period), one being a dedicated full day induction session. The other meetings were largely devoted to Board briefings by WABGR, both on continuing activities and new activities that commenced following Parliament's concurrence of the revised Project. Development action was focussing on elements of Development Stage 1, basically the area west of Long Beach Estate (inclusive) and the northern part of the Scientific Park.

WABGR briefings on Project progress have been enhanced, through the Company tabling a written summary at meetings and then speaking to it. This procedure was welcomed, as it improved both a free-flow of discussion and the Board's record keeping.

An issue raised by the Conservation Council independently of the Board, over possible non-compliance by a previous proponent of environmental conditions regarding the site's geomorphic values, was being examined by the Department of Environment (DoE). Out of session, the Board informally contributed comment on a draft Terms Of Reference for a proposed consultant review of the contentious issue. When advertised, however, no applications were received. There was consensus support for an alternative proposal that WABGR consider picking up this review under complimentary on-going environmental obligations.

Handling of environmental assessment proposals for the revised Project appeared to have been dealt with as suggested by the Board, with the terrestrial components separated from the water-based elements. It was reported that the DoE had recommended to the EPA that the Project's terrestrial components of the revised Project did not need specific environmental assessment, as they were not considered to vary significantly from the previous plan. Separate action was in progress jointly by WABGR and the City of Rockingham to ascertain issues with the proposed boat launching ramp, prior to formal referral to the EPA.

Detailed design and other work were in progress for Development Stage 1, the Project's Western Precinct west of the existing Long Beach Estate, inclusive. Public Works commitments for this stage were also being progressed, including:

- establishment of a 'Kennedy Bay' foundation (within clause 3.24 of the Development Plan Text);
- upgrade to Long Beach Estate;
- establishment of new public open space (east of Long Beach Estate)
- an environmental education strategy/facilities;
- improvements to the Scientific Park; and

- improvement to the western foreshore network.

WABGR have also been discussing with the Water Corporation the potential to base the development around an Integrated Urban Water Management Strategy, involving water recycling concepts.

In May, some Board Members and community representatives participated in a Company-organised workshop that was focussed on examining structural concepts for the foundation. The outcomes of the discussions are being investigated for presentation back to the Board.

The Year Ahead

Governance Matters

In the year ahead it is also likely that other aspects of the Port Kennedy Development Act will be reviewed by the Board. This is to ensure that the Board is familiar with its provisions and identify any actions required, eg:

- indemnity of Board Members (section 18);
- the existence of regulations made under the Act (section 22); and
- outcomes of any formal review of the operation of the Act (section 38).

The immediate need that was recently pursued, however, was the appointment of a Deputy Chairperson for the Board (section 15 of the Act). In addition, the Board's Executive Officer recently completed the following:

- updated Board contact details;
- confirmed that the package of key documents held by Members is complete; and
- as at June 30 2005, arrangements that are in hand include the following: draft Rockingham Lakes Regional Park Management Plan; consolidated version of the State Agreement; and convenient-size versions of the miscellaneous plans covered by Schedule 1 of the State Agreement.

A Board Member has also undertaken to draft an index to the *Constitution and Proceedings of the Board*, based on sections 12 to 17 plus Schedule 2 of the Act.

Noting that nearly half of the Board's membership changed over the current review period of 30 months, it is expected that further turnover will occur over the probable decade-long duration of WABGR's revised Project. Some thought has thus been given to developing an induction package for new Members as they come on board, which is expected to be completed in the year ahead.

Project Matters

Very early in the year ahead, the Board will be giving consideration to the processes and action required for dealing with Project reports, and for reviewing specific matters referred to it and the consequential provision of advice the Board will need to give the Minister.

The Board will need to understand the likely timing of such referrals so that it can function in an effective and timely manner.

Community Information Matters

The Board is aware of community interest in the development project, particularly by local residents, conservation groups and recreational fishers. It will, therefore, be looking at the potential for providing project updates through a special webpage at DPI's website.

Noting the requirement for "adequate public consultation" in certain situations in the Agreement Act (section 13 (4)) when exercising Board functions, the Board will consider having a process in place ready for this need.



Appendix 1

Functions of the Port Kennedy Management Board **As at section 13 (1) of the Port Kennedy Development Act, 1992**

- (a) to consider the proposals submitted to the Minister by the Company under clause 4 of the Agreement and to advise the Minister on the effect of the proposals upon the environment. *
- (b) to advise the Minister when the Board considers that the commencement of construction of the project described in the Agreement is imminent.
- (c) to advise the Minister on matters related to the protection of flora and fauna* in areas of vacant Crown land in the Port Kennedy area.
- (d) to facilitate the further study of the geomorphological features of the Port Kennedy area and to educate the public on the environmental importance of those features.
- (e) to advise the Minister on the progress of development of the project described in the Agreement.
- (f) to advise the Minister with respect to the issue of Crown Grants to the Company under the Agreement.
- (g) to advise the Minister on any requirements for the maintenance of land, buildings, or facilities and breakwaters, in the Port Kennedy area or waters in or abutting that area.
- (h) to monitor whether the conditions and procedures attached to the Environmental Approval* have been or are being complied with by the Company and to advise the Minister if the Board considers that the Company has failed to comply with any condition or procedure.
- (i) to monitor the implementation by the Company of the provisions of the Agreement and to advise the Minister if the Board considers that the Company has failed to comply with any provision of the Agreement.
- (j) to advise the Minister on the future use and development of the stage 2 area.
- (k) subject to section 21 (1), to direct and control any future development of the stage 2 area.
- (l) to advise the Minister on any future development of the development area*.
- (m) to inquire into and advise the Minister on any matter relating to the Port Kennedy area on which the advice of the board is sought by the Minister.

[These are functions most likely to trigger s.13 (4) of the Act, requiring the Board to ensure there is adequate public consultation concerning the scientific values of the Port Kennedy area, thus requiring adequate time to comply]*