

17 February 2005

The Honourable P D Beattie, MLA
Premier
15th floor, Executive Building
100 George Street
BRISBANE Q 4000

BOE LAWYERS

P +61 7 3511 7575 | F +61 7 3511 7979

8 Petrie Terrace Brisbane Q 4000 | PO Box 5151 West End Q 4101

ABN 49 659 730 363 | www.boelawyers.com.au

Andrew Boe | Associates Paula Morreau | Louisa Pink

Criminal Law | Administrative Law | Human Rights | Indigenous Law

Dear Premier

Re: Palm Island Community Centre

Louisa Pink and I have been trying to assist the Palm Island Aboriginal Council in their 'dialogue' with government. We raised the issue about the inappropriateness of the PCYC Association operating the Community Hall with the Director-General of DATSIP, Mr Hoey and other senior executives from the Department of the Premier and Cabinet on 23 December 2004.

The current situation between the council and the government concerning the management of the Community (Youth) Centre suggests that we have largely been ineffective to this point.

To us the relevant matters to weigh up include:

The state of infrastructure on the Island

There is no community infrastructure on the island that is generally accessible to the community particularly the youth, women and the elderly other than the local 'canteen'. People can be found on the jetty and in the streets late into each night. During the day, life revolves around the uncovered, hot space outside the government owned store.

A Department of Public Works, Director-General's briefing note (2003) that we have seen carefully records the living conditions that attend the community and provides a compelling argument for the construction of the originally planned PCYC Centre. Some of the D-G's statistics bear brief restatement:

- 3000 Aboriginal people living on the Island in about 220 houses (an average of 17 people per house)
- 16 youth suicides in a 8 month period in about 2003
- 8 domestic homicides.

In this context the initiative of the PCYC was desperately needed and timely. It is not difficult to see that without the government's energy and resources the Centre would not have been constructed. It does suggest however that government focus on this need had been wanting in this area of infrastructure prioritisation.

The cost of the construction is said to be about \$5.5M. It is a large expenditure but should not be seen as being extravagant if proper regard is had to the infrastructure limitations that prevail on the island.

Recent Events

Whatever might have been the state of police/community relations before the death in police custody in November 2004, it has certainly dipped since then given the known sequel to that event.

The relevant chronology for present purposes is:

- A local Aboriginal man, well known and liked and from a respected family was arrested for singing out to police and 'chipping' one of the police officers for being an Aboriginal man doing police work. That officer took it in his stride. The white sergeant however went back and arrested him for this behaviour. He was taken into custody and died on the cement floor of the watchhouse an hour or so later.
- The local police hesitated in informing the State Coroner and in the result the investigation at the initial and critical stages was undertaken by other police.
- The sergeant deflected inquiries from family members who brought food for the man. They were not told that he had died and was lying in his cell, metres away from the front counter.
- Despite statutory and other requirements (including RCADIC recommendations), the interviews of the police and the critical witnesses were also initially undertaken by other police.
- The man sustained injuries including facial bruises, 4 broken ribs and a ruptured liver (the pathologist notes that it was almost cut in half by the force applied to that area).
- According to the documented pathology, he died a painful death, effectively alone whilst he was being monitored by a cell camera. He received no medical attention. Anyone wishing to assess the grief felt and held by the family and close members of the community must look at this video recording. The family have.
- The State Coroner, about 5 days later, released an initial autopsy report that revealed the nature of the injuries. The publication was understood by the community as stating that the Coroner could not then exclude the possibility that the death was caused by an "accidental fall."
- The response of some members of the community directed at police facilities has been well documented. Notably the police station and courthouse and another police building were destroyed. The former being scheduled for demolition. No one was hurt.
- The subsequent police and government response is also documented. In addition to newsprint, the arrest process which was in some instances quite heavy handed, is scorched in the memory of many people including many children.

The current situation in summary is:

- One aboriginal man is dead.
- More than 30 Aboriginal men have been charged with the offences concerning police property. The bail conditions preclude these people returning to their homes, family and employment on the island.
- No police officer has been charged.
- No police are under criminal investigation pending the coronial inquest.

The Centre is the only venue on the island that could accommodate this inquest.

The inquest will commence on 28 February. Part of it will be held on the island. The Coroner's ruling in this respect is contingent upon his having access to the Centre. His Honour ruled over objections from the police interests and that of Counsel assisting.

The pivotal basis for the ruling was the possible availability of the Centre which was used for the Coroner's direction hearing. Hundreds of members of the community attend in support of the family.

The recent past

There is no point in summarising the trouble history of the original Palm Island settlement. It is well documented and known by your close advisers.

Police conflict with the community has been omnipresent.

Police have been seen by generations within the community as "the agents of government policy".

The legal premises

Despite the above context the legal framework surrounding the land on which the building has been built is not unimportant.

- The land remains held by the council as trustee under a DOGIT. They hold it for use for the "benefit of the Aboriginal inhabitants".
- The building was built by the government.
- There was financial contribution from non-government sources.

I have advised the council after commissioning independent advice from senior legal counsel that the construction of the building does not displace the council's ownership of the land and rights in relation to it.

This does not seem to be disputed. In fact it is assumed in the government seeking to require the council to enter into a 9 year lease, as lessor, with the PCYC Association as the tenant of the building. The notable terms of the lease include that the PCYC Association is to pay a 'peppercorn' for the lease (\$1.00 per annum). The PCYC Association is meeting some, but not all, of the running costs of the Centre.

So it is clear that:

- The land on which the centre is built remains held by the council as trustee for use for the benefit of the Aboriginal inhabitants.
- The council does not have the financial capacity to run or even maintain the Centre without specific recurrent funding from either government or other sources.

Summary

The condition that the government is seeking to impose upon the council and the community viz., that the Centre be managed and run by the PCYC Association, is not appropriate if due regard is given to the above.

The effective result of this condition is to withhold from the community a community asset and venue capable of meeting a number of urgent community needs. The D-G briefing note, back in 2003, noted:

“It is likely that the ownership of the Centre will pass to the PIAC, so the councillors are the key stakeholders in the process of community involvement.”

The public posturing between the government and the council may be politically necessary but you would know that it is not an effective way to resolve conflict.

I ask that you consider the matter being formally mediated by an independent person so the points of difference can be delineated and properly negotiated. We raised these matters in December 2004, your advisers have chosen not to engage in any discussion to resolve it. Please reconsider your government’s position.

Andrew Boe | aboe@boelawyers.com.au

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