

EXTRACT FROM BHT BARRISTER'S SUBMISSION TO IWC LAWYERS RE : ADVERSE IMPACTS IN APPLICANT'S SUGGESTED AMENDMENTS TO S106

"Below is an overview of the main changes to the s.106 proposed by the applicant developer (BIL), which if accepted would have a serious negative effect on securing delivery of the "Public" benefits to the harbour (BHIC). Some benefits are not secured at all. Of course, Mr. Malcolm Thorpe is director of both BIL and BHIC, and from the balance of which of his proposed changes benefit his development company, and cause harm to the harbour, rather than benefit the harbour as claimed in the application, one may speculate as to where the real interest lies. It is to be borne firmly in mind that it is claimed by the developer applicant that the entire purpose of the application is the benefits to the harbour. Similarly the benefits to the harbour are the sole basis on which the 13 houses were found to be justifiable by the planning committee. If these benefits are not secured through the agreement the permission will be deeply flawed. This is in addition to the other serious flaws in the decision, as set out in recent correspondence. For this reason in particular, I am copying this letter to those to whom I sent a copy of the Opinion of Leading Counsel's advice to BHT.

1. BIL proposed to delete the requirement for a lease to be granted to the harbour for its facilities. IWC proposed this in early 2016, after initial resistance, BIL finally expressed agreement many months later, only now to seek to renege on that agreement.

This harms the harbour, which will have no security of tenure, and benefits the developer

2. BIL proposed to delete the requirement to maintain the existing facilities at Bembridge Marina until the new facilities are provided. (or provide substitute carpark see 4 below).

This harms the operation of the harbour, and financially benefits the developer.

3. BIL proposed to delete the obligation to complete all of the 13 houses. As the obligation to account for any excess profits to be provided to the harbour only arises on completion of all of the houses (as drafted) this puts delivery at risk.

This harms the harbour, and benefits the developer, potentially very significantly financially.

4. BIL proposed to delete reference to the obligation to construct the replacement car park at Bembridge Marina.

This harms the harbour, in its operation at Bembridge, and financially benefits the developer.

5. BIL proposed to delete reference to a number of elements of the benefits from the definitions of the facilities to be secured as benefits, thus not guaranteeing their delivery.

This harms the harbour, and financially benefits the developer.

6. The confusing introduction by the developer of its own adviser as arbiter of analysis of costs and profits for assessing the value of contributions to the harbour gives rise to potential conflicts of interest.

7. BIL's failure to include its commitment to apply all cash profit from its 20% profit on the development to repayment of the harbour's debts. This was set out in a formal legal submission to the Council on 28th July and was relied upon by the planning officer in his report to committee.

This financially harms the harbour and financially benefits the developer.

This list is not exhaustive, nor is it selective; we found no proposed amendments which would be of a material benefit to the harbour.”