

Enquiries: Jane O'Malley  
Our Ref: 035\_2019\_03\_21  
Your Ref: PO23/2018  
File No.: CM\_CS\_301



26 March 2019

Mr Dean Unsworth  
Chief Executive Officer  
Shire of Murray  
PO Box 21  
PINJARRA WA 6208

Dear Dean

**PO23/2019 – Proposed Stage One Earthworks – Point Grey Marina Lot 572 Carrabungup Road,  
Point Grey – Recommend not approved**

The Peel-Harvey Catchment Council recommend that the Development Application for the proposed Stage One Earthworks of the Point Grey Marina is **not approved** prior to the proponent meeting the outstanding State and Commonwealth conditions of approval.

The Peel-Harvey Catchment Council has been involved with assessing planning applications for the Point Grey Development for the access road (“entrance road”), land development (“terrestrial component”) and marina and channel since attending the initial RPS organised site visit and workshop in September, 2007. Enclosed are copies of our submissions from 2008-2019 which provide detail and evidence to support our recommendation that the marina and channel not be approved.

The PHCC are of the opinion that the proposed Point Grey Marina, including the construction of a 2.5 km navigation channel across the Harvey Estuary is the single highest risk development to the on-going health of the Ramsar-Listed Peel-Harvey Estuary.

The estuary, qualifies the Peel-Yalgourup System of wetlands against Ramsar Criterion 1, as the largest and most diverse estuarine complex in south- western Australia. The detrimental impacts of the Channel in particular, will be permanent and the financial costs for ongoing maintenance will be a legacy for the ratepayers of the Shire of Murray. While we are of the strong opinion that both the State and the Commonwealth have not been judicial in their roles in protecting the Estuary, in accordance with the Environmental Protection Act 1986 (EP Act) and the Environmental Protection Biodiversity Conservation Act 1999 (EBPC Act), we recognise that these approvals have been provided, subject to Conditions. Please refer to submissions attached, including details of our appeal against the EPA time extensions, and our media release of September 2018 which clarifies our ongoing position that the EPA ignored science and evidence in their decision. This evidence rests heavily on new research showing that there is a very high risk of the proposed channel collecting and concentrating toxic monosulfic black oozes in the estuary waterbody.

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The PHCC believe that the proponent is already in breach of a number of State and Commonwealth conditions, as detailed below. The fact that the proponent has not complied with existing conditions reinforces concerns about ongoing compliance across all approvals.

In summary our concerns with regard to this Development Application are:

**Primary Concerns:**

- The PHCC question whether the proponent has met **State and Commonwealth conditions** as detailed below (see Outstanding Conditions). If they have not, this demonstrates a lack of regard for both the State and Commonwealth processes. Approving a Development Application which would allow the commencement of any action prior to having met the Commonwealth and State Government conditions would demonstrate that this lack of regard will be tolerated at a Local Government level, and set the tone for future actions and processes.
- The impacts of the proposed channel and marina will **impact on the criteria under which the Peel-Yalgorup Ramsar System is listed under the Ramsar Convention**, risking the ongoing listing (as detailed in previous submissions, attached);
- The **impacts of the dredging of the proposed Channel cannot be mitigated**. According to the condition placed on the development by the Australian Government, the impacts of the dredging of the proposed navigation channel will be mitigated through devising and implementing a Capital Dredging and Spoil Disposal Management Plan (CDSMDMP). This plan will only be made available for scrutiny by the public after approval by the Minister for the Environment. We believe entrusting the future ecological health of the Peel-Harvey Estuary to this process does not provide adequate protection and rather than mitigate risks, creates a risk of its own. Is the Shire aware of whether or not this plan has been lodged with the Commonwealth?
- There is **no demonstrated mechanism** by which to hold the proponent **financially accountable** for the whole of life maintenance of the channel, to which the Development Approval is the first stage. The ongoing costs of the maintenance of the Channel in perpetuity, will shift to the ratepayers of the Shire of Murray and potentially the City of Mandurah, given that the Channel falls across the two municipalities. Given that both the capital and maintenance dredging of the channel is conditional on dredge spoil not being disposed of into the Peel-Harvey Estuary (see Outstanding Conditions – Federal Government below), the costs associated with dredge spoil management are likely to be significant and should be carefully considered by the Shire in consideration of this Development Application.

## Outstanding Conditions – State Government:

State Conditions of Assessment under the provisions of the EP Act are outstanding, or if they have been undertaken, they have not been made publicly available in accordance with both State and Commonwealth approvals, demonstrating a breach of condition to make them publicly available. In particular we draw your attention to the outstanding conditions, as listed below:

Assessment Number 1751 (1 August 2012, Statement No. 906):

- 4-6 The proponent shall submit to the CEO the first **compliance assessment report fifteen months** from the date of issue of this statement addressing the twelve months from the date of issue of this statement and then annually from the date of submission of the first compliance assessment report. The compliance assessment report shall..... (4) **be made publicly available** in accordance with the approved compliance assessment plan.....
- 5-1 Subject to condition 5-2, within a reasonable time period approved by the CEO for the issue of this statement and for the remainder of the life of the proposal the proponent shall make **publicly available**, in a manner approved by the CEO, all validated environmental data.....
- 7-2 (1) **Prior to commencement of any ground disturbing activities, transfer 10.6 hectares of rural zoned remnant foreshore vegetation** .... In private ownership to the Crown for the purposes of conservation and recreation.
- 7-2 (3) **Prior to any subdivision or the commencement of ground disturbing activities**, whichever is sooner, develop and submit a **land purchase offset strategy** to the CEO for approval on advice from the Department of Environment and Conservation. The strategy will comprise a land acquisition component of **not less than 22 hectares**.
- 8-2 To verify that the requirements of condition 8-1\* have been met, the proponent shall prepare a **Channel and Marina Management Monitoring Plan** for estuary water and sediment quality to the satisfaction of the CEO **prior to the commencement of construction**.
- \*8-1 The proponent shall ensure that the operation of the proposal does not cause an unacceptable decline in estuary water and sediment quality compared to reference sites .....*
- 8-2 (2) [The management plan shall include]... the **protocols and procedures for monitoring** water and sediment quality at the impact and reference monitoring sites referred to in condition 8-2 (1)

## Outstanding Conditions – Commonwealth Government:

Commonwealth Conditions (2010/5155) (28 June, 2014) under the provisions of the Environmental Protection Biodiversity Conservation Act, 1999 are outstanding, or if they have been undertaken, they have not been made publicly available in accordance with the approval, demonstrating a breach of conditions to make them publicly available. In particular, we draw your attention to the outstanding conditions, as listed below:

1. Condition 1 states that *“At least three months prior to the commencement of the action, the person taking the action must prepare and submit a **Capital Dredging and Spoil Disposal Management Plan (CSDSMP)** for the Minister’s approval, to mitigate the potential impacts from the capital dredging activities and for the protection of the **Peel-Yalgorup Wetlands** and habitat for listed migratory species and listed threatened species. The person taking the action must not commence the **capital dredging** and disposal activities unless the **Minister** has approved the CSDSMP. ....”*

While the works described in the Development Application do not require dewatering or dredging, they form part of the *proposed action*. i.e. *to develop an onshore marina, including the associated boating channel, car park and boat ramps*, and so a CSDSMP must be completed according to Condition 1 prior to commencement of the action.

The proposed action, and associated impacts, should not be enabled if the proponent does not have an approved CSDSMP. That is, **why would Development Approval be issued to enable an action which would adversely impact on a Ramsar-listed wetland, if the proponent has not, and may not in the future, comply with the fundamental requirements of their Commonwealth approval, such as the CSDSMP.**

Recent (2018) dredging challenges in the Peel-Harvey to maintain access to the Yunderup Canals through the South Yunderup Entrance Channel demonstrate the significant financial, social and environmental challenges associated with the ongoing dredge spoil management, which were transferred, and are now borne by the community. In this instance, as the Shire would well know, dredge spoil disposal was undertaken within the estuary. Condition 2 requires that *“No capital dredged or maintenance dredged material or excavated material from the marina, entrance channel or navigational channel is to be disposed of in the Peel Inlet or Harvey Estuary”*.

**A Development Application should not be granted until, and unless, this fundamental issue (a CSDSMP approved by the Commonwealth Minister) is in place.**

2. Condition 14 states that *“If, at any time after five years from the date of this approval [28/6/14], the person taking the action has not substantially commenced the action, then the person taking the action must not substantially commence the action without the written agreement of the **Minister.**”*

The Development Application includes the clearing of 1 ha of vegetation plus excavation of six hectares of land to a depth of one metre AHD and stockpiling of excavated material. The RPS Report accompanying the DA suggests that the “PGDC is seeking to substantially commence ..... through a DA and subsequent works”. Based on the scale of the proposed Marina and Channel development, has the Shire had confirmation that the proposed scale of the DA would constitute substantial commencement and therefore meet Condition 14, by the five year timeframe, being 28 June, 2019? The PHCC do not believe the proposed DA constitutes “substantial commencement”. **If the scale of substantial commencement cannot be confirmed, it would reinforce the recommendation to not approve a Development Application which will detrimentally impact on the values of a Ramsar-listed Wetland, if the Commonwealth Government conditions will not be met, and the Approval becomes null and void.**

3. Condition 15 states that *“unless otherwise agreed to in writing by the **Minister**, the person taking the action must publish all management plans and/or strategy, referred to in these conditions of approval on their website. Each management plan and/or strategy, must be published on the website within 1 month of being approved. The person taking the action must notify the **Department** within five (5) business days of publishing the management plan(s) on their website. The management plan(s) must remain on their website for the period this approval has effect.”*

The proponent’s Development Application document (section 5.2) refers to “An Acid Sulfate Soils and Dewatering Management Strategy.... for construction of the marina has been prepared to the satisfaction of DWER. These documents are not publicly available (confirmed by pers. comm. A. Hall on behalf of Tian An Australia 18.3.19).

Given that a suite of management plans must be prepared at least three months prior to commencement of the action, which has to be undertaken by 28 June 2019, the PHCC believe that the suite of plans must be developed and submitted to the Minister for approval by 28 March 2019.

**Has the Shire of Murray received, or is it aware of, these management plans that are required to have been approved by the Minister. If not, does the Shire of Murray expect to be provided with these by the proponent by 28 March 2019?**

4. Condition 5(a) states that, “To protect the Peel-Yalgorup Wetlands, habitat for listed migratory species and habitat for Black Cockatoos, the person taking the action must: a) Prior to construction commencing, **either acquire land(s) or provide funding to DPaW** for the **acquisition of 22 ha** of foraging and potential breeding habitat **for Black Cockatoos**, to be managed in perpetuity by DPaW. Written confirmation of DPaW’s agreement to the land acquired or the transfer of monies to DPaW must be provided to the Department.

**To the Shire of Murray’s knowledge, has this required acquisition of land taken place or has funding been provided to do so?**

5. The Development Application includes clearing of 1.04 ha of foreshore vegetation. The proponent has identified that this foreshore vegetation unit is Open Woodland of *Eucalyptus marginata*, *Allocasuarina fraseriana* and *Banksia attenuata* and/or *Banksia grandis* with Tall Open Scrub of *Kunzea glabrescens*.

**Has the proponent confirmed that the foreshore vegetation, which includes *Banksia attenuata*, is not part of the Banksia Woodlands of the Swan Coastal Plain Threatened Ecological Community (TEC)? Will the proponent be asked by the Shire of Murray to confirm the presence/absence of Banksia Woodlands TEC as part of any new referral process?**

## **Cost to the Community**

The cumulative degradation of the Peel-Harvey Estuary and the externalising of this cost to the community needs to cease. Science and logic need to stop being ignored. It is incredible that the State and Commonwealth continue to invest in restoration of our Estuary system, for example through the Regional Estuaries Initiative, The Peel-Harvey Estuary Grants and the National Landcare Program Regional Land Partnerships while at the same time, continuing to make poor decisions that will contribute to its decline.

The State Government has also invested in a full assessment of the Peel-Harvey Estuarine Fishery for sustainability against the Marine Stewardship Council certification requirements. We believe that the Point Grey Marina Development jeopardises the sustainability and the certification of this important recreational and commercial fishery. We ask that the Shire of Murray not make these same poor decisions, but learn from the mistakes of e.g. The Jurien Bay Marina and the development at Port Geographe. Experience has shown that in almost every instance, proposed Management Plans and measures fail to adequately address the impacts of development.

Our community has incurred the loss, and continues to bear the management challenges and costs, to try to recover a deteriorating system. This begs the question for all levels of government, including the Shire of Murray to consider: **At what point do the cumulative impacts of marine and urban development tip the system into a non-recoverable ecological state?**

## **Ramsar Convention and “Wise-use” of Wetlands**

The Ramsar treaty’s philosophy is based upon the “wise use” of wetlands. Countries, in becoming signatories to the Ramsar Convention, commit to work towards the wise use of all the wetlands and water resources in their territory, through national plans, policies and legislation, management actions and public education. “The Ramsar Convention defines wise use of wetlands as “the maintenance of their ecological character, achieved through the implementation of ecosystem approaches, within the context of sustainable development”. Wise use can thus be seen as the conservation and sustainable use of wetlands and all the services they provide, for the benefit of people and nature (<https://www.ramsar.org/about/the-wise-use-of-wetlands>)”.

Over the past 12 years the PHCC has led the development of the framework for the collaborative management, monitoring and wise-use of this internationally recognised system, comprised of four key plans. Initially PHCC partnered with DBCA as the lead agencies to develop the Ecological

Character Description for the Peel-Yalgorup System (Hale & Butcher, 2007) and the Monitoring and Evaluation Guide (2008). Subsequently, with 27 Stakeholder partners, PHCC authored the Ramsar Site's Management Plan (2009).

The Ramsar Convention's Program on communication, capacity building, education, participation and awareness (CEPA) recognises the vital importance of putting strategic and targeted communication in place to counter the alarming loss of wetlands worldwide (64% were lost last century; Ref: <https://www.ramsar.org/activity/the-ramsar-cepa-programme> ). In 2017 PHCC published Australia's first, (and one of only a few in the world) site-specific stand-alone CEPA Plan for the Peel-Yalgorup System.

**We strongly suggest that the entrance channel and marina development are not in accordance with the principle of sustainable use of the wetlands and the services they provide for the benefit of people and nature.**

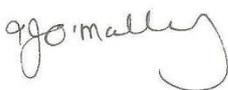
The PHCC has been tasked with the delivery of a \$5million project under the National Landcare Program to work towards the National goal *"by 2023, there is restoration of, and reduction in threats to, the ecological character of Ramsar Sites through the implementation of priority actions."*

We call on the Shire of Murray to refuse the Development Application until the proponent can demonstrate that they have met all State and Commonwealth conditions required for the complete proposal.

We would welcome the opportunity to make a deputation to the Shire when considering the Development Application.

Should you require further information, please do not hesitate to contact Jane O'Malley on (08) 6369 8800 or email [admin@peel-harvey.org.au](mailto:admin@peel-harvey.org.au).

Yours sincerely



Jane O'Malley  
Chief Executive Officer

Encl:

- 1\_2008\_WAPC\_Urban Deferred
- 2\_2009\_Scoping Doc
- 3\_2010\_Marina**
- 4\_2011\_Entrance Road
- 5\_2011\_Residential
- 6\_2011\_Marina PER**
- 7\_2011\_Appeal Marina**
- 8\_2017\_Marina\_Change Condition**
- 9\_2017\_Minister Dawson
- 10\_2018\_Minister Dawson
- 11\_2019\_DoEE Questions re compliance
- 12\_Media Release