Enquiries: *Jane O'Malley*
Our Ref: *050_2020_05_08*
Your Ref: *NA*
File No.: *BU_A_201*

PHCC Working Together
Peel-Harvey Catchment Council

12 May 2020

Professor Graeme Samuel AC
EPBC Act Review Secretariat
Department of the Environment and Energy
GPO Box 787
CANBERRA ACT 2601

Dear Professor Samuel

Peel-Harvey Catchment Council (PHCC) seeks a stronger, more accountable EPBC Act for the twenty-first century that responds to the enormous pressures Australia's natural environmental assets are now under. We strongly assert that a reformed Environmental Protection and Biodiversity Conservation Act (EPBC Act) must be supported by a number of high-level binding Commonwealth-State agreements that cover:

- biodiversity conservation standards,
- management of internationally significant sites (including Ramsar wetlands),
- assessment of development proposals, and
- a complete state-by-state overhaul of Australia's native vegetation management systems, including the provision of financial and non-financial incentives.

PHCC is the recognised NRM organisation for the Peel-Harvey Catchment, Western Australia, located within the internationally recognised south-west Australia biodiversity hotspot and including large parts of three distinct bioregions.

We have significant interaction with the Act, and engage with the current legislation through:

1) Input into legislative processes to assess and manage of controlled actions by third parties impacting on Matters of National Environmental Significance (MNES)
2) Provision of information to support the identification, coverage and protection of MNES
3) Active management and protection of Ramsar wetlands, specifically the Peel-Yalgorup Wetlands System, and its 1.173 million hectare catchment
4) Active management and protection of threatened species and communities identified as MNES.

The key challenge for reform (principles for reform, Q26)

The key principle of reform is that the EPBC Act must recognise that ever-increasing parts of Australia's biodiversity are now rare or threatened, and are under enormous pressure from direct development, and altered environmental conditions including climate change. Our region is not

58 Sutton Street, Mandurah
Western Australia 6210
T: +61 8 6369 8800
www.peel-harvey.org.au

alone in this regard, but south-west Australia, including the Perth-and Peel regions is particularly threatened and stressed. This is a clear indication that the Act, in its current form is not meeting its objectives.

In some way, the objects of a reformed Act must incorporate the goals of:

1) PROTECT: Protect what MNES we have left (i.e. no substantive clearing). Current levels of protection afforded by the Act are not sufficient
2) RESTORE – Support active conservation initiatives to increase environmental resilience. The Act must, at a landscape scale, support revegetation and restoration, through planning, incentives and reporting. The new Act must be very proactive in this regard.
3) POSITIVE LEGACY - Ensure that new developments achieve a positive environmental legacy, and proposals that are likely to have a significant impact on MNES are not supported.

Streamlining assessment processes, is a secondary consideration for the reform process, and any changes to assessment processes must be benchmarked against standards of environmental protection. It is PHCC's experience that previous government initiatives to streamline or expedite processing of development applications has gone hand-in-hand with reduced resources and capabilities of government to properly assess proponents claims and the advice of their experts. Hence, we often do not know what we have lost or impacted until after it lost or impacted. The evaluation of the processes should be relevant to the MNES protected and quality of the outcome, not the number of days to assess the application.

While the consideration of social and economic factors in making decisions to protect biodiversity and other environmental assets is very important, these considerations should not be within the scope of a reformed Act.

Below are our major positions, concerns and proposals related to the review of the Act. Where possible, we have cross-referenced our submission to questions posed in the Review Discussion Paper.

We have also attached a summary of our learnings from two major experiences related to the Point Grey Marina Development (EPBC 2010/5515) in the Peel-Yalgorup Ramsar System, and the Strategic Assessment of the Perth and Peel Regions 2012 – 2019 (SAPPR).

Effectiveness of a national environmental protection legislation

Over the past 10 years at least, the EPBC Act has provided a 'safety-net' level of protection to Australia's threatened species and ecological communities, and significant natural assets. While PHCC has concerns that there are deficiencies in the implementation of the current Act, we appreciate acutely the protection that the Act has afforded to some environmental assets in the Peel-Harvey Catchment and south-west Australia.

For example, threatened species such as the Black Cockatoos of south-west Australia may well not have received the level of attention that they currently do were it not for the EPBC Act. Unfortunately, successive State Governments have not given, and continue to not give these species the protection that they deserve, and populations of each of the three species continue to trend

downwards. The combined efforts of Commonwealth and State Governments has not been sufficient to reverse this trend.

Similarly, while not sufficient to arrest decline in condition, the EPBC gives the Peel-Yalgorup Ramsar Wetland system a level of status from which community and government efforts can be mounted.

Now is the time to step up the level of protection and active management of Australia's national and internationally significant environmental assets.

1. Focus for reform (Questions 5 and 6)

The PHCC sees the following as the major areas for reform:

a) Clearer definition of roles and responsibilities for all levels of government, especially Commonwealth and State (Q14)
b) Improved public consultation processes (Q20 and Q21)
c) Inferred refusals (Q15)
d) Reform of the Strategic Assessment process (Q13) and landscape-scale approaches (Q16)
e) Approvals, compliance with conditions of approval, amending conditions
f) Proactive and innovative protection of biodiversity (Q22 – Q25)
g) Requirement to evaluate effectiveness of conditions
h) Accreditation of consultants

1a. Reform roles and responsibilities for Commonwealth and State Governments (Q14)

The legislation needs to be strengthened so that the Commonwealth Government has, and retains, the responsibility to protect MNES at all times. The Commonwealth Government **should not shift the responsibility of their decisions to the State Government**, even if a State Government process has been empowered to assist the Commonwealth Government in the decision-making process. Similarly, it should **not fall to Local Government to oversee and coordinate implementation, plans and defend decisions**.

This delegation approach, has contributed to the unacceptable approval of the Point Grey Marina development in the Peel-Yalgorup Ramsar Site (EPBC 2010/5515) (See Attachment 1: Case Study #1). This case study clearly illustrates where implementation of the Act failed and as a result more than a decade later all levels of Government, the proponents and the community continue to expend significant resources. A concerted community campaign, with the support of the Local Government, has prevented the development thus far.

Where a MNES exists, the Commonwealth Government has a responsibility to not only enforce protection, but **actively contribute towards its secure protection** where there have been repeated refusals of proposals on a single site. There are numerous cases in the Peel-Harvey Catchment where similar proposals have been refused on a single site as they cannot retain MNES as part of the development (e.g. sand quarries over Banksia Woodlands of the Swan Coastal Plain). In these cases, the Commonwealth should contribute to the lasting protection of the MNES occurrence.

In particular, where there is an impost/tenure via a Commonwealth Act (e.g. Ramsar), it is not right for a Commonwealth Act that leaves it to the state to fund the execution of these designated areas. This is very much the case with the protection of Ramsar wetlands, such as the Peel-Yalgorup Ramsar system. The protection of the wetland's Ramsar values not only requires inappropriate development to be prevented, but ongoing, active, funded on-ground management. While the PHCC with government and community contributes to this on-ground management through Landcare projects, this in no way meets the Commonwealth Government's obligations to protect Ramsar values.

The Act should be amended to accredit state environmental protection processes (Q17), but only where these processes meet criteria for high standards of environmental protection and public consultation, and each assessment is audited and checked for compliance. Local Government processes should not be accredited due to the generally low capability of Local Government to conduct environmental assessments and secure expertise in specific environmental fields.

PHCC does not support self-regulation (Q18).

1b. Improved public consultation processes (Q20 and Q21)

In terms of the public consultation associated with EPBC development assessment, it should be mandatory that there be **genuine engagement** with the Local Government and the NRM Region within which the proposed development lies, or will impact, at the outset and throughout the life of the project so that they have the opportunity to have input (local knowledge, experience etc.). This input, comments and responses, should be publicly available – e.g. if the Local Government is opposed for a good reason then the Department's assessment and determination needs to be in writing to enable this to be a transparent process and ensure the assessor has the best possible knowledge to inform their decisions.

Community **consultation processes should be completely overhauled**. The current system is not working. It is very difficult for the community to find information regarding the status of, and opportunities to comment on development applications and assessments any longer. The onus should be on the Commonwealth to undertake genuine consultation at all stages (e.g. if changes to conditions or timing are being considered). Simply listing in public notices is not sufficient – this Act deals with the highest risk developments (impacting on MNES – or they would not be referred) – however, it appears to have the weakest and quickest consultation process and timeframe of most planning and environmental processes.

1c. Inferred refusals (Q15)

The Act should be amended to **allow the Commonwealth Government to give inferred, early refusals** to proposals that will have a significant impact on MNES, such as the Point Grey Marina Development. In this way, proponents can be given a clear indication before they invest significant resources into a site or project, and understand that the proposal is unlikely to be able to be made acceptable under the Act. In the case of the Point Grey development, this

would have saved millions of dollars, spared a community the anxiety of fighting an inappropriate development, and ensured that the community could better invest its energy in restoring MNES rather than fighting for the protection of MNES that the Act is supposed to protect.

PHCC **does not support an automatic approval or exemption of 'low-risk' projects,** as suggested in the Discussion Paper (Q15, page 8). By definition, low-risk projects are not defined as a controlled action, and should be outside the scope of the Act. The current approach, where referral guidance is provided to proponents, is considered more than adequate.

1d. Reform of the Strategic Assessment process (Q13) and landscape-scale approaches (Q16)

The community and development sectors were recently told that the State Government have abandoned a seven-year EPBC Act Strategic Assessment process for the Perth and Peel Regions (SAPPR). The process was to put in place to provide certainty for long-term land development approvals and related conservation initiatives.

The abandonment of the process by the State Government is a significant disappointment to PHCC and many in the community who contributed thousands of unpaid hours to support the SAPPR process over 7 years. Whereas other strategic assessments around Australia may have come to an acceptable result for government and proponents, the SAPPR has deflated community confidence in the process where a State Government is also the proponent.

PHCC, in-principle, supports strategic environmental assessment, and its place within a reformed EPBC Act. Strategic Assessments should be required in places like the Peel-Harvey, where there are significant cumulative impacts over long-periods and MNES are trending negatively.

In the case of SAPPR, all sectors – urban development, industry, and community (except the State Government) wanted it to go ahead, and yet a change in State Government drew a line through it, even after the independent review of the process (12 months), identified continued unanimous sector support and provided a way forward.

The EPBC Act should create a stronger mechanism (with criteria) to require Strategic Assessments where cumulative impacts on MNES are identified as unacceptable to the Commonwealth Government. Metropolitan areas or regional growth zones are a typical example of where Strategic Assessments are critical for the conservation of MNES. In the case of SAPPR, the Commonwealth should be able to invoke a power to effectively require the State Government to complete the strategic assessment process and then support implementation. For example, the consequence of not reaching a strategic approval could be that individual approvals under the Act are not able to be obtained. As it stands, despite the huge expenditure of resources by all sectors on working towards implementation of the SAPPR, its abandonment means that the Perth-Peel area is now back to business as usual that led to increased listings under the EPBC Act, long and costly delays and significant wasting of resources at all levels.

PHCC strongly supports a two-pronged approach to conservation of biodiversity with both **habitat management at the landscape scale** as well as **species-specific protections** (Q16). The provisions in the current Act need to be complemented with powers and incentives to support regional or landscape-scale conservation initiatives, which could often help support strategic assessment approvals (e.g. SAPPR). The trade-off between species-specific and landscape-scale initiatives needs to be recognised within the Act, with the test being that no species or ecological community should be under increased threat as a result of giving priority to a landscape-scale response.

1e. Approvals, compliance with conditions of approval, amending conditions

Assessing and publishing compliance is not adequate and needs greater resources and support by Government, and there need to be significant consequences for non-compliance which will act as a deterrent. The PHCC is aware of examples in other countries (e.g. Germany) where non-compliance with conditions results in a stop-work which does not allow the proponent to progress the development where they are not meeting the conditions or purposely ignore conditions.

The history of compliance of a proponent should be publicly available and should persons who are involved in non-compliance be associated in any way with new proposals, they should be dismissed based on this (i.e. if you are caught doing something illegal, you are ineligible for approval into the future, somewhat like if you declare bankruptcy or similar and have to declare this in respect to future financial declarations).

There is a strong need to ensure that there are compliance officers based in Western Australia to ensure timely and effective implementation of the EPBC Act with a strong focus on accountability and enforcement.

Changes to an approval and extensions to time should not be provided for the convenience and at the request of proponents, unless there is a full and genuine process to understand the implications of changes to conditions with a full and robust consultation process with all effected parties. Changes to approvals should not be undertaken under delegated authority. The Pt Grey case study demonstrates a lack of understanding of consequences and impacts of changes to conditions. In this case the delegated officer believed they were making 'minor administrative changes', where they actually fundamentally changed the whole structure of the approval process and cost Local and State Government and community significant funding and resources trying to defend actions to ensure the order of information was in accordance with the intent of the original approval. Stakeholders who have taken the time to make submissions should automatically be advised of any considerations and/or decisions and should be seen as valuable resources to assist the Department in the process.

As illustrated by the case Study, the extension of the time frames in the Point Grey Marina Development were proponent-driven with no consultation afforded to significant stakeholders.

Proponent-led referrals and self-assessment is not consistent with good governance and raises the issue of impartiality.

1f. Requirement to evaluate effectiveness of conditions

Evaluation of success of approved projects should be undertaken and made publicly available over time. If the proponent has had to comply with conditions in respect to e.g. clearing, then what has been the long-term outcome – did buying some land 3000 km away protect the species? Genuine evaluation of the effectiveness of conditions is vital in understanding the long-term sustainability of the conditions
How will the Department determine their conditions are meeting their objectives?

1g. Accreditation of consultants

There should be a requirement that information provided as part of applications must be from accredited consultants and peer reviewed. Information provided is often poor quality, factually inaccurate, inadequate in scope or relevance and rarely peer-reviewed. Requiring information be accepted only from accredited consultants will streamline processes and result in government, community and industry having greater confidence in decisions and approvals, and ultimately will lead to better protection of Australia's environment.

2. Scope, reach, objects and Ecologically Sustainable Development (ESD) (Questions 1 to 4)

The PHCC are generally supportive of the Australian Government's definition and scope of MNES, and the addition of new MNES over the years. As suggested in the Review Discussion Paper (Q1) we strongly support the Commonwealth's intervention in the protection of environmental assets in each state where they are of national significance. Interestingly, most MNES are also of global significance given the high levels of endemism in WA, especially the south-west of Australia.

Our major concern in regard to the scope and reach is that the process of assessing and listing new MNES is often commenced too late, after the level of threat and pressure is so great on a species, site or environmental asset that measures to protect these assets are very expensive and can come with severe economic and social implications. There is also concern that the assessment and listing process takes too long, and can be overly controlled by Ministers. (E.g. the listing of Tuart Woodlands was held up recently by a Minister for the Environment for many months for no reason). A simple solution to this would be to ensure that any Ministerial decision-making was required to meet set statutory timeframes, and any delays were open to public scrutiny.

Delays to listing species/communities also impacts on landowners who have habitat on their land. This is an incentive for landowners to clear their land in anticipation of future uses, for fear of being caught up in EPBC restrictions into the future. That is, the early clearers are generally without consequence, until the habitat becomes so fragmented and scarce that the remaining landowners are then unable to utilise their land in the same way as their neighbours. Strategic Assessments and early and landscape scale assessments are required.

We also support the scope or 'reach' that the Act provides to the Commonwealth Government. It is critical that in the twenty-first century, Australian environmental protection law is coordinated across the nation, and closely linked to international environmental initiatives.

PHCC strongly asserts that the Commonwealth Government's environmental legislation should provide more clarity on how MNES are to be protected by the Commonwealth Government, and what role the Commonwealth Government will play in their protection. This should link to results of the 5 yearly State of the Environment Report, noting however that in its current (2016) form it is not a user friendly document and it is virtually impossible to derive relevant trend information from it.

The PHCC are **not supportive of any greater inclusion of social and economic factors, and cost-benefit analysis in decision-making under the EPBC Act (Question 2).** While ESD is a noble objective, social and economic factors undermine biodiversity conservation. Any legislative approach to support ESD at a national level is best achieved through a separate piece of legislation.

PHCC is **generally supportive of the Objects of the Act** (Question 3). The Act is focused on biodiversity conservation of nationally significance environmental assets and ecologically sustainable use of national resources. The review should seek to protect and tighten this focus, given that the challenge of biodiversity conservation is already beyond current government, industry and community responses. The addition of social and economic factors into decision-making through the EPBC Act should be avoided at all costs.

3. Future-proofing (Q7), processes and outcomes (Q8 and Q9) and national standards (Q10)

Climate Change

We stress the urgency for climate change action, both mitigation and adaptation, in order to protect our environment and biodiversity. The Act has a role to play.

To do this we also need better information to support adaptive management efforts. This includes understanding climate projections and their implications to the environment and biodiversity, and to investments in protection and restoration (where and how).

NRM Regions Australia 2013 discussion paper recommended "Re-thinking biodiversity conservation strategies as climate change unfolds. Conservation planning based on in situ conservation of individual species might not be the best strategy when ecosystems are changing rapidly….."

In 2014 the Australian Government provided funding to regional NRM organisations to update regional NRM plans to take account of latest climate change data. A unique feature of this approach was harnessing scientific expertise from Research and Development organisations, universities and others, at a multi-regional landscape scale. We have a good overview of future climate change impacts and the strategic actions required to mitigate some of those impacts on biodiversity, noting however that projections are trending faster and the implications are more significant than predicted.

The next review of the EPBC Act will be around 2030, by which time climate change impacts will be more established, widespread and perhaps irreversible– how can this review provide a foundation to manage this threat to our biodiversity?

National Reserves System

The reformed Act should better support the National Reserve System (NRS), including statutory recognition of the NRS and the NRS Strategy (2009 – 2030), and a reinvigoration of protection of natural areas in accordance with the IUCN's criteria for natural conservation/protection of natural areas. The NRS is the key backbone of Australia's biodiversity conservation system and greatly needs more attention from Commonwealth and State Governments. Importantly, the NRS is a key asset in planning and implementing landscape-scale conservation.

Processes and outcomes (Q8 and Q9)

PHCC strongly supports defined processes as well as clearly articulated outcomes in any environmental protection legislation. One cannot go without the other. PHCC does not support the definition of environmental outcomes without defined processes which provide transparency and clear, timely opportunities for public consultation.

4. Environmental protection AND environmental restoration (Q11 and Q12)

It is essential that the reformed Act both protect existing MNES from clearing and direct degradation AND support major national projects to restore Australia's rangelands, deserts, forests, woodlands wetlands, estuaries, rivers and coastline.

Australia has been cleared to a point that protection is not enough to conserve MNES. As confirmed by Australia's 2016 State of the Environment Report, 'biodiversity has continued to decline since 2011 and an increasing number of fauna (and flora) species have been listed as vulnerable, threatened or critically threatened'.

The State of the Environment Report identifies "*integrated regional or landscape-scale plans could be a priority for development in partnership with states and territories to meet a range of national and state level requirements…*" and "*A whole-of-landscape approach is required to effectively manage impacts and achieve meaningful outcomes*."

We propose that the review of the EPBC Act considers how bioregional planning, and potentially regional conservation planning, can link with or utilise regional NRM planning processes. Species specific plans would remain important, yet with their objectives more efficiently achieved within a landscape framework.

Long term, landscape scale restoration needs to be undertaken in priority areas.

5. Indigenous people's culture and knowledge (Q19)

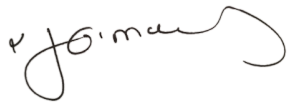
PHCC involves Aboriginal People of the Peel-Harvey Catchment, the Binjareb and Wilmen Peoples as a regular part of our work. This experience shows the importance of continuity, trust, mutual respect, and understanding of Aboriginal people's experience, journey, spirituality and values.

PHCC support the EPBC Act building in a greater, continuous role of Aboriginal People to protect and manage all MNES throughout Australia, in partnerships with government and others. The Act could enshrine the role of Traditional Custodians being involved in the management of MNES (via expansion of Ranger Programs or similar) on public lands, and the acknowledgement of Aboriginal names for places and species.

The impact on the spiritual values attached to specific MNES should form part of the environmental impact assessment under the Act, if not already. This is one of the few social values that should be included within the scope of the EPBC Act.

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.

Yours sincerely



Jane O'Malley
Chief Executive Officer

cc: Andrew Hastie, Federal Member for Canning

Encl:
- Case Study 1: Point Grey Development (EPBC 2010/5515) -
- Case Study 2: Strategic Assessment of Western Australia's Perth and Peel Regions

Separately Bound: Attachment 1 to Case Study 2: PHCC Submission: Review of Strategic Assessment of the Perth and Peel Regions (SAPPR), 27 September, 2018

Case Study 1: Point Grey Marina Development **(EPBC 2010/5515)**

This case study supports PHCC's position that the EPBC Act's development assessment process fails in protecting the environment and conserving biodiversity from the threats of development.

In summary, the Point Grey Marina development was issued an approval through the State and Commonwealth environmental impact assessment processes in 2011 (rezoning) and 2014 respectively, with related conditions. The proponent is in breach of conditions (both State and Commonwealth) and has been unable to demonstrate that they can meet with the existing conditions, yet, at their request, they have received time extensions from both the State and Commonwealth (March 2019). Importantly the Commonwealth removed critical conditions under delegated authority, with no consultation with effected parties (particularly the local government).

PHCC has been actively involved in processes related to assessment of proposals on the site since 2007 (e.g. workshops organised by proponents). PHCC has made numerous submissions from 2008-2019 across the three referrals, they being 1: Entry road; 2: Terrestrial urban development; and 3: Marina and channel. Submissions provided in accordance with protocols have provided detail and science-based evidence to support our recommendation that the marina and channel not be approved because of the impacts on the Peel-Yalgorup Ramsar System. We estimate that we have injected >6000 hours into trying to protect a Ramsar-listed wetland from inappropriate development, theoretically protected by the EPBC Act.

In approving the marina and associated channel, the State Minister for Environment laid down a number of conditions predominantly relating to compliance reporting, public availability of environmental data, protection of vegetation, environmental offsets, estuarine water quality management and monitoring and dredge timing. Two of the conditions are required to be complied with prior to ground disturbing activities taking place. These conditions concern transferring 10.6 hectares of privately owned foreshore land to the Crown for conservation and recreation purposes and the submission a land purchase offset strategy.

The Commonwealth approval requires a range of management plans to be prepared and implemented prior to certain works occurring, compliance reporting and includes similar conditions as the State approval regarding the transfer of land to the Crown and an offset strategy. Management plans relate to dredging and spoil disposal management, acid sulphate soils and dewatering, construction environment management and foreshore management.

Critical to this case study, the state extension to the Time Limit of Authorisation for Substantial Commencement was granted ignoring PHCC's submission opposing the grant of an extension without a comprehensive review of the approval in light of new information on the Peel-Harvey Estuary's worsening condition.

PHCC appreciates that proponents for a development need assurance that environmental approvals obtained from the Australian Government under the EPBC Act are binding for sufficient time during which the proponent can gather the resources needed to make substantial commencement on the development. However, it is our firm view that the balance has swung too far towards providing this

58 Sutton Street, Mandurah
Western Australia 6210
T: +61 8 6369 8800
www.peel-harvey.org.au

assurance to the proponent at the expense of protection of the environment and conserving biodiversity.

Of note, the Australian Government initially granted the proponent a Time Limit of Authorisation for Substantial Commencement of five years (June 2014-2019), which was later extended to June 2029 at the request of the proponent. The period of effect of the approval was also extended by five years to 31 Dec 2057

It is our firm view that approvals under the EPBC Act should not be extended beyond an initial five years, without a significant, comprehensive review with full public consultation. If the Australian Government is intent on providing environmental approvals under the EPBC Act effective for such long time frames (e.g. 2014-2057), then the original approval must at a minimum include a comprehensive risk-based analysis of processes that may bring about a change over that time frame to the environment and to the ecological character of the environmental assets the EPBC Act is supposed to protect (in this case, the Peel-Yalgorup Ramsar Wetlands System).

For example:

- Climate change scenarios must be modelled to assess what threats this poses to the environment and ecological character and whether or not the proposed development will exacerbate these threats. In the case of the Point Grey Marina proposal, climate change will have a significant impact on the development and the receiving environment through sea level rise and increase storm surges, and reduced freshwater inflows into the Estuary.
- Contingencies must be put in place to review the impact of development on threatened species and/or threatened ecological communities listed under the EPBC Act, including those new species/communities that are listed after the initial approval. In the case of the Point Grey development, the Tuart (*Eucalyptus gomphocephala*) woodlands and forests of the Swan Coastal Plain ecological community were listed under the EPBC Act in 2019 as critically endangered. The tuarts at and adjacent to the Point Grey Marina development were therefore not considered as Matters of National Environmental Significance when the environmental approvals for the development were granted in 2014, neither were they considered when the conditions to the Environmental approvals were made in 2019.

If the Australian Government considers that there is too much uncertainty to accurately model or predict changes to the environment then it should grant approvals only at a time scale appropriate to the level of certainty. For example, if there is insufficient data to predict the trajectory of species under threat over several decades then the Government should reduce the expiry on the environmental approvals accordingly.

Environmental Approvals should be reviewed frequently in an open and transparent way. In our experience, these are reviewed only when the Time Limit for Substantial Commencement / Time Limit of Authorisation is imminent and only at the request of the proponent. Opportunities to provide contemporary information or to request changes to the Conditions of an Environmental Approval should be made available to parties, with sufficient time to research and respond, other than just the proponent and the Australian Government.

Environmental Approvals are often subject to several conditions, usually requiring the proponent to provide more information or to undertake some action to satisfy the Australian Government that the risk to the environment from impacts of the development have been mitigated after the approval has been granted. We propose that where possible, this information or action should be provided or undertaken before the Environmental Approval is granted, rather than as a condition to the Approval to be implemented after the fact.

Over the past eighteen (18) months, with concerted community efforts, the Point Grey development has been refused by the Local Government, appealed by the proponent (costing the Local Government ~$40,000 to defend), then refused by the State Administrative Tribunal, based on concerns that environmental protection standards, and environmental conditions of Commonwealth approvals, have not been met. See: https://peel-harvey.org.au/community-faith-restored-point-grey-channel-refusal-upheld-by-state-administrative-tribunal-protects-internationally-significant-wetland/

Case Study 2: Strategic Assessment of Western Australia's Perth and Peel Regions

In principle, PHCC strongly supports Strategic Assessments as provided for under the Act. However, the Act should more strongly support Strategic Assessments through to successful execution, especially where there are significant environmental impacts from not having a strategic assessment approval in place.

The Strategic Assessment of the Perth and Peel Regions (SAPPR) provides a good case study of where a strategic environmental assessment is essential to protect MNES, but a newly elected Government has resulted in the assessment was not completed.

The SAPPR process commenced in 2011 and looked to provide a strategic level assessment and approval of the regional land planning framework for the Perth and Peel Regions to accommodate a population of 3.5 million people.

All the State Government-led processes to arrive at a draft plan, environmental impact assessment and proposed conservation actions took nearly >7 years and involved many resources being contributed by industry and community groups.

PHCC's public submission to the draft Perth and Peel Growth Plan for 3.5 million can be found here, and demonstrates the depth of community commitment and analysis to the process: https://peel-harvey.org.au/publications/strategic-assessment-aw-ag/

In mid-2018, sometime after the close of public submissions, the new State Government announced that the SAPPR process was to be suspended and reviewed by an Independent Panel. June 8, 2018 – Announcement of the Review and Terms of Reference https://peel-harvey.org.au/sappr-update/

PHCC's submission to the Independent Panel's review is included as Attachment 1, separately bound to this document.

In the case of SAPPR, all sectors – urban development, industry, and community (except the State Government) wanted it to go ahead, and yet a change in State Government drew a line through it, even after the independent review of the process (12 months), identified continued unanimous sector support and provided a way forward.