



Report and recommendations of the Environmental Protection Authority



Port Rockingham Marina - inquiry under section 46 of the *Environmental Protection Act 1986* to amend Ministerial Statement 826

Aureus Commercial Pty Ltd

Report 1583

September 2016

ENVIRONMENTAL PROTECTION AUTHORITY
REPORT AND RECOMMENDATIONS TO THE MINISTER FOR
ENVIRONMENT

**PORT ROCKINGHAM MARINA PROPOSAL, COCKBURN SOUND, CITY OF
ROCKINGHAM - INQUIRY UNDER SECTION 46 OF THE *ENVIRONMENTAL
PROTECTION ACT 1986* TO AMEND MINISTERIAL STATEMENT 826**

The Minister for Environment has requested that the Environmental Protection Authority (EPA) inquire into and report on the matter of changing the implementation conditions relating to the Port Rockingham Marina proposal, in order to extend the 'Time Limit of Authorisation' for substantial commencement (condition 3).

The following is the EPA's Report and Recommendations (No. 1583) to the Minister pursuant to section 46(6) of the *Environmental Protection Act 1986*.

Background

The Port Rockingham Marina proposal is to construct and operate a new marina facility located at the intersection of Wanliss Street and Rockingham Beach Road, Rockingham, within Cockburn Sound.

The EPA assessed the proposal at the level of Public Environmental Review and released its assessment report (Report 1339) in September 2009. The EPA identified the following key environmental factors relevant to the proposal:

- Marine Water Quality;
- Benthic Primary Producer Habitat; and
- Coastal Processes.

In applying the Environmental Assessment Guideline (EAG) for *Environmental principles, factors and objectives* (EAG 8, January 2015), these factors are now represented by:

- Marine Environmental Quality;
- Benthic Communities and Habitat; and
- Coastal Processes.

The EPA concluded that "it is unlikely that the EPA's objectives would be compromised, provided there is satisfactory implementation by the proponent of the recommended conditions".

Subsequent to finalising appeal determination 301 of 2009 (December 2009), the Minister for Environment approved the proposal for implementation, subject to the implementation conditions of Ministerial Statement 826 (February 2010).

Requested changes to conditions

Condition 3-1 of Ministerial Statement 826 requires the proponent to substantially commence the proposal within five years of the date of issue of the Statement (that is, before 18 February 2015).

The proposal has not yet substantially commenced. The proponent for the proposal, Aureus Commercial Pty Ltd, has requested an extension of the Time Limit of Authorisation for substantial commencement for a further five years, to 18 February 2020.

Application of relevant EPA policies and guidelines

In inquiring into the change to conditions, the EPA has considered relevant published EPA policies and guidelines for each of the key environmental factors identified above and the relevant matters are outlined in Table 1.

The EPA notes that other published policies and guidelines were also considered but not determined to be relevant.

Inquiry into the requested change to conditions

The EPA recommends imposing a substantial commencement timeframe implementation condition so that the conditions relating to a proposal can be reviewed within a reasonable timeframe to ensure:

- consideration is given to changes in the environment, scientific or technology knowledge arising since the initial assessment; and
- proposals are being implemented using best practice and contemporary methods so that the EPA objectives for the relevant key environmental factors are met.

The EPA has a discretion as to how it conducts this inquiry. The currency of the initial assessment and issue of the Ministerial Statement (that is, when it was published) is also instructive in determining the extent and nature of the inquiry under s46.

Inquiry findings

In conducting this inquiry, the EPA reviewed the information provided by the proponent. In considering whether it should recommend an extension of the Time Limit of Authorisation for the implementation of the proposal, the EPA also considered whether there is any new relevant information in relation to the assessment of the potential impacts of the proposal.

Marine Environmental Quality

The EPA's objective for this factor is "To maintain the quality of water, sediment and biota so that the environmental values, both ecological and social, are protected".

In the EPA's initial assessment of this proposal, impacts on Marine Water Quality was a key environmental factor.

Marine water quality within Cockburn Sound has long been of concern, and the EPA notes that the issue has recently been raised as a result of a fish kill incident in November-December 2015. The Department of Fisheries published a report regarding the incident (February 2016), which concluded that the most likely cause of the event was a combination of a bloom of algal diatoms coupled with the likely involvement of other contributory factors, such as low dissolved oxygen levels. Modelling work determined that the source area of the fish kill was likely to have been in the southern section of Cockburn Sound, an area historically associated with poor water quality issues including low dissolved oxygen levels with nutrient enrichment and poor flushing of the embayment.

Although located in the southern section of the Cockburn Sound, the design of the marina includes an 'open-pile' pier section where it adjoins the foreshore in order to maximise natural flushing, thus reducing the potential for algal blooms and other water quality issues to develop.

The EPA notes that, if implemented, the construction of the Port Rockingham proposal is likely to have some direct, localised temporary impacts on marine water quality within the spatially defined 'zone of effect' during the construction period. The magnitude of these changes will be controlled by the requirement of the proponent to not exceed the environmental quality criteria as prescribed by the *State Environmental (Cockburn Sound) Policy 2015* outside of the spatially defined 'zone of effect' as mentioned above.

Existing condition 6 of Ministerial Statement 826 requires the proponent to implement the proposal to achieve the Environmental Quality Objectives and Levels of Ecological Protection identified in the *State Environmental (Cockburn Sound) Policy 2005*. The EPA notes that the *State Environmental (Cockburn Sound) Policy 2005* has been revised since the initial assessment and the EPA recommends that condition 6 be updated to recognise the revised policy (*State Environmental (Cockburn Sound) Policy 2015*).

In consideration of the information provided by the proponent and relevant EPA policies and guidelines, the EPA considers that:

- there is no significant new or additional information that justifies the reassessment of the issues raised by the proposal;
- there has been no new significant change in the relevant environmental factors since the proposal was assessed by the EPA in Report 1339 (September 2009); and
- no new significant environmental factors have arisen since the EPA's assessment of the proposal.

The EPA is therefore satisfied that the following revised and existing implementation conditions will continue to address the relevant environmental factors, and manage and mitigate the potential impacts of the proposal:

- Revised condition 6 Long Term Protection of the Environmental Values for Cockburn Sound;
- Existing condition 7 Construction of Marina; and
- Existing condition 8 Coastal Processes.

The proposed changes to conditions are summarised in Table 2.

Benthic Communities and Habitat

The EPA's objective for this factor is "To maintain the structure, function, diversity, distribution and viability of benthic communities and habitats at local and regional scales".

The marina will be located in an area devoid of seagrass and will not significantly impact upon any benthic communities. Consistent with previous assessments and advice provided by the EPA in relation to marina proposals, the priority remains that there is no additional overall loss of seagrass in the southern section of Cockburn Sound, which this proposal achieves.

The EPA considers that no further assessment is required other than that in the original assessment for this factor as the proponent has not proposed any changes to the proposal other than the proposal implementation timeframe.

As there have been no significant changes to this environmental factor and no new information to consider for this environmental factor, the EPA is satisfied that the proposed condition 6 (Long Term Protection of the Environmental Values for Cockburn Sound) and existing condition 7 (Construction of Marina, Construction Environmental Monitoring Plan) are appropriate to manage and mitigate the potential impacts of the proposal by ensuring that construction and operation of the proposal minimises impacts to benthic communities and habitat.

Coastal Processes

The EPA's objective for this factor is "To maintain the morphology of the subtidal, intertidal and supratidal zones and the local geophysical processes that shape them".

The minimal footprint of the marina will not disrupt the structural or functional integrity of the Cockburn Sound ecosystem and it is predicted that there will be a minor impact on existing natural coastal processes with a requirement for a small amount of sand bypassing on an annual basis.

The EPA considers that no further assessment is required other than that in the original assessment for this factor as the proponent has not proposed any changes to the proposal other than the proposal implementation timeframe.

As there have been no significant changes to this environmental factor and no new information to consider for this environmental factor, the EPA is satisfied that the existing condition 8 (Coastal Processes, Adaptive Management Strategy) is appropriate to manage and mitigate the potential impacts of the proposal on coastal processes by ensuring that construction and operation of the proposal does not cause changes to shoreline movements, width of beach and beach profiles.

EPA conclusions and recommendations

Having inquired into this matter, the EPA submits the following recommendations to the Minister for Environment:

1. condition 3 of Ministerial Statement 826 may be amended to allow for the timeframe for substantial commencement of the Port Rockingham Marina proposal to be extended by a further five years, to 18 February 2020;
2. condition 6 of Ministerial Statement 826 may be amended to reference the updated *State Environmental (Cockburn Sound) Policy 2015* and its updates; and
3. if the Minister agrees with these recommendations, and after consulting relevant decision making authorities, the Minister issues a statement of decision to change condition 3 and condition 6 of Statement 826 in the manner provided for in the attached recommended Statement.

Table 1 – Relevant EPA Policies and Guidelines

Process/ Factor	Policies and guidelines considered relevant	Applied Yes/No	Comments
Change to conditions	<i>Environmental Impact Assessment (Part IV Division 1 and 2) Administrative Procedures 2012</i>	Yes	The Administrative Procedures provide the principles and practices around the environmental impact assessment process undertaken by the Office of the Environmental Protection Authority.
Change to conditions	Environmental Impact Assessment Guideline (EAG) 1 <i>Defining the Key Characteristics of a proposal</i> , 2012	No	<p>EAG 1 focuses on how to define the key proposal characteristics.</p> <p>EAG 1 was considered when identifying whether the key characteristics have been changed in relation to changes to the proposal.</p> <p>No changes to key proposal characteristics have been proposed by the proponent and this guideline has not been applied.</p>
Change to conditions	EAG 8 for <i>Environmental principles, factors and objectives</i> , 2015	Yes	<p>EAG 8:</p> <ul style="list-style-type: none"> • communicates the EPA’s environmental principles, factors and associated environmental objectives; • describes the EPA’s framework for environmental principles, factors and objectives and how they link to EPA guidance; and • outlines the EPA’s expectations for applying environmental principles, government environmental policies, factors, objectives and guidance through environmental impact assessment. <p>In considering the change to conditions EAG 8 was applied when:</p> <ul style="list-style-type: none"> • confirming the key environmental factors identified for the original assessment in the current policy context; • determining whether the identified environmental factors are still relevant and if any new factors should be considered; and • preparing advice on whether the EPA’s environmental objectives can be met.

Process/ Factor	Policies and guidelines considered relevant	Applied Yes/No	Comments
Change to conditions	EAG 9 for <i>Application of a significance framework in the environmental impact assessment process, 2015</i>	Yes	EAG 9 describes how the EPA makes decisions, throughout the entire EIA process, on the likely significance of impacts of a proposal. The guideline was applied when: <ul style="list-style-type: none"> • assessing the nature, significance and degree of the changes to the proposal.
Change to conditions	EAG 11 for <i>Recommending environmental conditions, 2015</i>	Yes	EAG 11 describes the EPA's approach to preparing recommended proposal implementation conditions. The guideline was applied when: <ul style="list-style-type: none"> • preparing the recommended implementation conditions.
Change to conditions	EPB 11 for <i>Consultation on Conditions Recommended by the EPA, 2012</i>	Yes	EPB 11 describes the EPA's requirements to consult with key decision making authorities and the proponent with regards to recommended implementation conditions. The guideline was applied when: <ul style="list-style-type: none"> • the OEPA consulted with the proponent on changes to conditions.
Marine Environmental Quality	EAG 15 for <i>Protecting the Quality of Western Australia's Marine Environment, 2015</i>	Yes	The objective of the Guideline is to provide an environmental quality management framework to protect the environmental values of Western Australia's marine environment from waste discharges and contamination. This Guideline specifically applies to constructed marinas. The guideline was applied when: <ul style="list-style-type: none"> • assessing the changes to the implementation conditions. The proponent has not proposed any changes to the design and implementation of the proposal. Proposed condition 6 in Ministerial Statement 826 will manage potential water quality impacts related to the proposal.

Process/ Factor	Policies and guidelines considered relevant	Applied Yes/No	Comments
Marine Environmental Quality	<i>State Environmental (Cockburn Sound) Policy 2015 and Environmental Quality Criteria Reference Document for Cockburn Sound (a supporting document to the State Environmental (Cockburn Sound) Policy 2015), 2015</i>	Yes	<p>The objective of the policy is to ensure that water quality of Cockburn Sound is maintained and, where possible, improved so that there is no further net loss (and preferably a net gain) in seagrass areas, and that the other values and uses are maintained.</p> <p>The guideline was applied when:</p> <ul style="list-style-type: none"> assessing the changes to the implementation conditions. The proponent has not proposed any changes to the design and implementation of the proposal. Proposed condition 6 in Ministerial Statement 826 will ensure management of the potential water quality impacts related to the proposal.
Benthic Communities and Habitat	<i>EAG 3 for Environmental Assessment Guidelines for Protection of Benthic Primary Producer Habitat in Western Australia's Marine Environment, 2009</i>	Yes	<p>The objective of this Guideline is to address protection and maintenance of ecological integrity and biodiversity through a framework for assessment of cumulative irreversible loss of, and serious damage to, benthic primary producer habitats in Western Australia's marine environment.</p> <p>The guideline was applied when:</p> <ul style="list-style-type: none"> assessing the changes to the implementation conditions. The proponent has not proposed any changes to the design and implementation of the proposal. Existing conditions 6 and 7 in Ministerial Statement 826 ensure that construction and operation of the proposal minimises impacts to benthic communities and habitat.
Coastal Processes	<i>EPB 18 Sea Level Rise, 2012</i>	Yes	<p>The purpose of this Bulletin is to set out the EPA's expectations for environmental impact assessment with respect to sea level rise.</p> <p>The guideline was applied when:</p> <ul style="list-style-type: none"> assessing the changes to the implementation conditions. The proponent has not proposed any changes to the design and implementation of the proposal. Existing condition 8 in Ministerial Statement 826 ensures that construction and operation of the proposal will not cause changes to shoreline movements, width of beach and beach profiles.

Table 2 – s46 Assessment of proposed changes to implementation conditions

Condition	Proposed Change	Assessment and Evaluation of Proposed Changes
Conditions 1 and 2	No proposed change	N/A
Condition 3	Amend condition to allow an additional five (5) years of authorisation for substantial commencement	<p>This is a standard condition that requires the implementation of the proposal to substantially commence within five years of the date of authorisation. The change to this condition is to allow an additional five years for the implementation of the proposal to substantially commence taking in to consideration that all other conditions in Statement 826 are still able to achieve the EPA's objectives.</p> <p>3 Time Limit for Proposal Implementation</p> <p>3-1 The proponent shall not commence implementation of the proposal after 18 February 2020, and any commencement prior to this date must be substantial.</p> <p>3-2 Any commencement of implementation of the proposal, on or before 18 February 2020, must be demonstrated as substantial by providing the CEO with written evidence, on or before 18 February 2020.</p>
Conditions 4 to 5	No proposed change	N/A
Condition 6	Amend condition to reflect updated policy and its updates	<p>This condition is applied to marine proposals in the Cockburn Sound area. The Policy was updated in 2015 and the condition has been amended to refer to the updated policy and its updates.</p> <p>6 Long Term Protection of the Environmental Values for Cockburn Sound</p> <p>6-1 Through a Marina Waterways Monitoring and Management Plan, the Proponent shall implement the proposal to achieve the Environmental Quality Objectives (EQOs) and associated Levels of Ecological Protection (LEP), including their spatial allocation as specified in Schedule 2 of the <i>State Environmental (Cockburn Sound) Policy 2015</i> (SEP, Version issued 2015) and its updates, such that the Environmental Values prescribed in Section 4 of the SEP are protected.</p>
Condition 7 to 8	No proposed change	N/A

RECOMMENDED ENVIRONMENTAL CONDITIONS

**STATEMENT TO CHANGE THE IMPLEMENTATION CONDITIONS APPLYING TO A
PROPOSAL
(Section 46 of the *Environmental Protection Act 1986*)**

PORT ROCKINGHAM MARINA
COCKBURN SOUND

Proposal: The proposal is to construct and operate a new marina facility located at the intersection of Wanliss Street and Rockingham Beach Road, within Cockburn Sound. The proposal is further documented in Statement 826.

Proponent: Aureus Commercial Pty Ltd
Australian Company Number 146 479 218

Proponent Address: 15 Crompton Road
Rockingham WA 6168

Report of the Environmental Protection Authority: 1583

Preceding Statement/s Relating to this Proposal: 826

Pursuant to section 45 of the *Environmental Protection Act 1986*, as applied by s46(8), it has been agreed that the implementation conditions set out in Ministerial Statement No. 826 be changed as specified in this Statement.

1. Condition 3 changed

Condition 3 of Ministerial Statement 826 is deleted and replaced with:

3 Time Limit for Proposal Implementation

- 3-1 The proponent shall not commence implementation of the proposal after 18 February 2020, and any commencement prior to this date must be substantial.
- 3-2 Any commencement of implementation of the proposal, on or before 18 February 2020, must be demonstrated as substantial by providing the CEO* with written evidence, on or before 18 February 2020.

2. Condition 6 changed

Condition 6 of Ministerial Statement 826 is deleted and replaced with:

6 Long Term Protection of the Environmental Values for Cockburn Sound

6-1 Through a Marina Waterways Monitoring and Management Plan, the Proponent shall implement the proposal to achieve the Environmental Quality Objectives (EQOs) and associated Levels of Ecological Protection (LEP), including their spatial allocation as specified in Schedule 2 of the *State Environmental (Cockburn Sound) Policy 2015* (SEP, Version issued 2015) and its updates, such that the Environmental Values prescribed in Section 4 of the SEP are protected.

*"CEO" means the Chief Executive Officer of the Department of the Public Service which is responsible for the administration of section 48 of the *Environmental Protection Act 1986*, or his delegate.

[Signed xxx]

Albert Jacob MLA
MINISTER FOR ENVIRONMENT; HERITAGE