



Report and recommendations of the Environmental Protection Authority



Point Grey Marina proposal - inquiry under section 46 of the *Environmental Protection Act 1986* to amend Ministerial Statement 906

Point Grey Development Company Pty Ltd

Report 1595

April 2017

ENVIRONMENTAL PROTECTION AUTHORITY
REPORT AND RECOMMENDATIONS TO THE MINISTER FOR
ENVIRONMENT

**POINT GREY MARINA PROPOSAL - INQUIRY UNDER SECTION 46 OF THE
ENVIRONMENTAL PROTECTION ACT 1986 TO AMEND MINISTERIAL
STATEMENT 906 (ASSESSMENT NO. 2106)**

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 Point Grey 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. 1595) to the Minister pursuant to section 46(6) of the *Environmental Protection Act 1986*.

Background

The Point Grey Marina proposal is for the construction and operation of an onshore marina and associated boating infrastructure (e.g. boat pens, jetties, navigational aids, entrance channel, protective groynes, public boat ramps and car parks) on the western side of the Point Grey peninsula. The proposal also includes the construction of a 2.5 kilometre navigation channel across the Harvey Estuary from the Point Grey Marina to the Dawesville Channel.

The Point Grey Marina proposal is a component of the Point Grey Outline Development Plan which is a requirement of Town Planning Scheme (TPS) No.4, Amendment No. 104.

The EPA assessed the proposal at the level of Public Environmental Review and released its assessment report (Report 1420) in December 2011. The EPA identified the following key environmental factors relevant to the proposal:

- Terrestrial flora and vegetation;
- Terrestrial fauna and waterbirds;
- Estuarine environmental quality; and
- Estuarine fauna.

In applying the Environmental Protection Authority, *Statement of Environmental Principles, Factors and Objectives*, December 2016 (SEPFO) these factors are now represented by:

- Flora and Vegetation;
- Terrestrial Fauna;
- Marine Environmental Quality; and
- Marine Fauna.

The EPA concluded in December 2011 that “it is likely that the EPA’s objectives would be achieved, provided there is satisfactory implementation by the proponent of the recommended conditions”.

The Minister for Environment approved the proposal for implementation, subject to the implementation conditions of Ministerial Statement 906 (1 August 2012).

The Point Grey Marina proposal was approved under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cwth) by the Commonwealth Department of the Environment on 28 June 2014.

Requested changes to conditions

Condition 3-1 of Ministerial Statement 906 requires the proponent to substantially commence the proposal within five years of the date of issue of the Statement (that is, before 1 August 2017).

The proposal has not yet substantially commenced. The proponent for the proposal, Point Grey Development Company Pty Ltd, has requested an extension of the Time Limit of Authorisation (now referred to as “Time Limit for Proposal Implementation”) for substantial commencement to be extended to be consistent with the Commonwealth approval timeframe, to 28 June 2019.

Application of relevant EPA policies and guidelines

In inquiring into the change to conditions, the EPA has given due consideration to relevant published EPA policies and guidelines, noting that a number of published policies and guidelines pertaining to this proposal were considered but not determined to be relevant.

On 13 December 2016 the EPA released a new suite of environmental impact assessment policy and guidance documents.

The Minister requested the section 46 inquiry on 7 December 2016, prior to the release of the new *Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2016* and environmental impact assessment policy and guidance documents.

In its assessment, the EPA has considered and given due regard to, where relevant, its current environmental impact assessment policy and guidance documents (Table 1).

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 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. Ministerial Statement 906 was published on 1 August 2012.

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 for Proposal Implementation for substantial commencement 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.

Flora and Vegetation

The EPA's objective for this factor is "*To protect flora and vegetation so that biological diversity and ecological integrity are maintained*".

The construction of the Point Grey Marina proposal will disturb up to 9.8 hectares of remnant native vegetation. EPA Report 1420 identified that the residual flora and vegetation impact related to the proposal was a permanent loss of 7.1 hectares of foreshore vegetation. The proponent proposed an environmental offsets strategy to mitigate the residual environmental impacts to terrestrial flora and vegetation, The offset package was considered to be consistent with the Government of Western Australia's "Environmental Offsets Policy" (September 2011) and met the principle that offsets should be "like for like or better". The proponent has not proposed any additional disturbance for the proposal.

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 have been no new significant changes in the relevant environmental factors since the proposal was assessed by the EPA in Report 1420 (December 2011); and
- no new significant environmental factors have arisen since the EPA's assessment of the proposal.

The EPA is therefore satisfied that the existing implementation condition 6, Protection of Vegetation; and existing condition 7, Environmental Offsets, of Ministerial Statement 906 minimises the impact to flora and vegetation and continues to meet the EPA's objective.

Terrestrial Fauna

The EPA's objective for this factor is "*To protect terrestrial fauna so that biological diversity and ecological integrity is maintained*".

EPA Report 1420 concluded that the proposal would impact on the local availability of mainly foraging habitat of the *Wildlife Conservation Act 1950* specially protected black cockatoo's including the endangered (EN) *Calyptorhynchus latirostris*, (Carnaby's cockatoo) and *Calyptorhynchus baudinii* (Baudin's cockatoo) and the vulnerable (VU) *Calyptorhynchus banksii naso* (forest red-tailed black cockatoo). The disturbance of potential foraging habitat was considered in the original assessment (EPA Report 1420).

In its original assessment, the EPA considered that the proponent's commitment to rehabilitate degraded foreshore areas and implement the long-term offset strategy would result in an overall net gain of habitat. The proponent is not proposing any additional disturbance for the implementation of the proposal.

Since the original assessment, further work has been undertaken outlining the extent of the black cockatoo species listed above for the strategic assessment of the Perth and Peel regions (Government of Western Australia (2015) *Perth and Peel Green Growth Plan for 3.5 million*).

The proposal is located within the Interim Biogeographical Regionalisation for Australia (IBRA) bioregion of the Swan Coast Plain.

In terms of potential longer-term cumulative impacts for Carnaby's cockatoo's due to the loss of Swan Coastal Plain feeding habitat, the draft Green Growth Plan indicates that an estimated 15% of Swan Coastal Plain feeding habitat may be intersected by future development in the Perth Peel Region. Approximately 50% of the Swan Coastal Plain feeding habitat is already protected in formal conservation reserves (IUCN I-IV (25,455 ha) and in land managed by the Department of Parks and Wildlife (27,350 ha).

A total of approximately 84% (316,478 ha) of potential forest red-tailed black cockatoo and 97% (320,204 ha) Baudin's cockatoo habitat type, within the strategic assessment area, is already protected in formal conservation reserves (IUCN I-IV) and land managed by the Department of Parks and Wildlife.

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

- there has been no change to the approved extent of native vegetation disturbance;
- there is no significant new or additional information that justifies the reassessment of the issues raised by the proposal;
- there have been no new significant changes in the relevant environmental factors since the proposal was assessed by the EPA in Report 1420 (December 2011); and
- no new significant environmental factors have arisen since the EPA's assessment of the proposal.

The EPA considers that existing condition 7 (Environmental Offsets) of Ministerial Statement 906 requiring the implementation of the Environmental Offset Strategy, Point Grey Marina and revegetation of Point Grey foreshore areas as described in the Vegetation Management Plan, will mitigate residual impacts associated with the Point Grey Marina proposal.

Marine Environmental Quality

The EPA's objective for *Marine Environmental Quality* is "To maintain the quality of water, sediment and biota so that environmental values are protected".

EPA Report 1420 considered the following potential construction and operational impacts:

- construction dredging activities impacts on the Harvey Estuary water quality;
- monosulfidic black ooze forming within the navigation channel during operation; and
- operational marina water and sediment quality.

Construction impacts

In EPA Report 1420, the EPA considered that the dewatering and excavation activities would not have similar issues to previous developments such as Eastport and Southport Canal Estate due to:

- "wet" excavation methodology to reduce dewatering and limestone fines;
- low risk acid sulfate soils across all soil types;
- no direct or point source discharge; and
- dewatering (and dredge) effluent treatment system.

EPA Report 1420 noted that the Department of Water (DoW) is the lead agency in relation to the water quality management of the Peel-Harvey Estuary and that a DoW Licence under the *Waterways Conservation Act 1976* (WC Act) is required prior to the proposal proceeding.

The EPA noted that the DoW would require the proponent to implement the Acid Sulfate Soil Dewatering Management Plan, Dredge Spoil Disposal Management and Monitoring Plan, as part of the WC Act Licence.

The EPA understands that the DoW is still responsible for administering the WC Act and considers that construction activities in the estuary, associated with the proposal, could be appropriately managed by the DoW under the WC Act Licence.

Operational Impacts

In its original assessment, the EPA was concerned that during operations, the proposed navigation channel may fill with fine organic sediment forming monosulfidic black ooze, potentially turning the channel anoxic, undermining community and Government initiatives in the Peel Harvey Estuary.

The EPA considered that condition 8 (Estuarine Water and Sediment Quality – Operational Phase) be recommended to hold the proponent to its modelling predictions and ensure that adequate management controls were in place.

The EPA notes that the proponent has indicated that there is no change to the marina design assessed in EPA Report 1420.

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

- there is no change to the original proposal;
- there is no significant new or additional information that justifies the re-assessment of the issues raised by the proposal;
- there have been no new significant changes in the relevant environmental factors since the proposal was assessed by the EPA in Report 1420 (December 2011); and
- no new significant environmental factors have arisen since the EPA's assessment of the proposal.

The EPA considers that that the existing implementation condition 8 (Estuarine Water and Sediment Quality – Operational Phase) will continue to address the relevant environmental factors of the proposal by ensuring that operation of the proposal minimises impacts to Inland Water Environmental Quality and Marine environmental Quality.

Marine Fauna

The EPA's objective for *Marine Fauna* is "*To protect marine fauna so that biological diversity and ecological integrity are maintained*".

In the original assessment, the EPA considered that the proposal would result in the temporary loss of a small proportion of habitat for key species such as blue swimmer crab, cobbler, mullet, herring and whiting. The impacts were considered by the EPA to be temporary, localised and manageable.

The EPA recommended implementation condition 9 (Dredge Timing), to limit dredging activities to the winter/spring period to avoid breeding times of the key species.

The proponent has indicated that there is no change to the existing proposal.

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

- there is no change to the original proposal;
- there is no significant new or additional information that justifies the reassessment of the issues raised by the proposal;
- there have been no new significant changes in the relevant environmental factors since the proposal was assessed by the EPA in Report 1420 (December 2011); and
- no new significant environmental factors have arisen since the EPA's assessment of the proposal.

The EPA considers that existing implementation conditions will continue to address the relevant environmental factors, of the proposal by ensuring that operation of the proposal minimises impacts to Marine Fauna.

EPA conclusions and recommendations

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

1. That condition 3 of Ministerial Statement 905 be amended to allow for the timeframe for substantial commencement of the Point Grey Marina proposal to be extended to be consistent with the Commonwealth approval timeframe, to 28 June 2019; and
2. That, after complying with section 46(8) of the *Environmental Protection Act 1986*, the Minister issues a statement of decision to change condition 3 of Statement 906 in the manner provided for in the attached recommended Statement.

Table 1 – Relevant EPA Policies and Guidelines

Process/ Factor/s	Policies and guidelines considered relevant	Applied Yes/No	Comments
Change to conditions	<i>Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2016</i>	Yes	<p>The Administrative Procedures provide the principles and practices around the environmental impact assessment process undertaken by the Office of the Environmental Protection Authority under Part IV of the EP Act.</p> <p>Relevantly, section 5.4 of the Administrative Procedures provide guidance on the process for changing conditions under section 46 of the EP Act.</p>
Change to conditions	<i>Environmental Impact Assessment (Part IV Divisions 1 and 2) Procedures Manual, December 2016</i>	Yes	<p>The Procedures Manual supports the Administrative Procedures and contains more detailed information on each step of the EIA process, including section 46 changes to conditions, under stage 5.4.</p> <p>More relevantly, stage 5.4 details the process for changing implementation conditions.</p>
Change to conditions	<i>Statement of Environmental Principles, Factors and Objectives (December 2016) (SEPFO).</i>	Yes	<p>Relevantly, the SEPFO:</p> <ul style="list-style-type: none"> • considers the object and principles of the <i>Environmental Protection Act 1986</i>; • uses environmental factors and objectives to organise and systemise environmental impact assessment and reporting; • takes a holistic view of the environment and a proposal or scheme's potential impact on the environment; and • considers significance when determining whether or not to assess a proposal or scheme and recommend whether or not an assessed proposal or scheme may be implemented. <p>In this case the SEPFO was applied in:</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/s	Policies and guidelines considered relevant	Applied Yes/No	Comments
Flora and Vegetation	Environmental Factors Guideline – Flora and Vegetation (December 2016).	Yes	<p>The purpose of this guideline is to outline how the factor Flora and Vegetation is considered by the EPA in the environmental impact assessment process.</p> <p>In considering the change to conditions, this Guideline was applied when defining and identifying the environmental values for the factor Flora and Vegetation Relevantly this guideline was applied with regard to:</p> <ul style="list-style-type: none"> • application of the mitigation hierarchy to avoid or minimise impacts on flora and vegetation, where possible; • the potential impacts as a result of the proposed change, including direct and indirect impacts; • the significance of the flora and vegetation, and the risk to the flora and vegetation; • whether proposed management and mitigation approaches are technically and practically feasible; and • whether the Point Grey Marina proposal area will be revegetated in a manner that promotes biological diversity and ecological integrity. <p>The proponent has advised that there are no changes to the approved area of native vegetation disturbance.</p>
Terrestrial Fauna	Environmental Factors Guideline – Terrestrial Fauna (December 2016)	Yes	<p>The purpose of this guideline is to outline how the factor Terrestrial Fauna is considered by the EPA in the environmental impact assessment process.</p> <p>In considering the change to conditions, this Guideline was applied when considering the EPA's original assessment of the proposal with regard to:</p> <ul style="list-style-type: none"> • application of the mitigation hierarchy to avoid or minimise impacts on terrestrial fauna where possible; • the terrestrial fauna affected by the proposal; • the potential impacts and the activities that will cause them, including direct and indirect impacts; • the significance of the terrestrial fauna and the risk to those fauna;

Process/ Factor/s	Policies and guidelines considered relevant	Applied Yes/No	Comments
			<ul style="list-style-type: none"> • the current state of knowledge of the affected species/assemblages and the level of confidence underpinning the predicted residual impacts; and • whether proposed management approaches are technically and practically feasible. <p>This guideline was applied when defining and identifying the environmental values for the factor Terrestrial Fauna.</p> <p>The proponent has advised that there is no increase in the disturbance of potential foraging and breeding habitat from that approved in the original proposal.</p>
Marine Environmental Quality	Environmental Factors Guideline – Marine Environmental Quality (December 2016).	Yes	<p>The purpose of this guideline is to communicate how the factor Marine Environmental Quality is considered by the EPA in the environmental impact assessment process, with the intent to prevent or minimise pollution and protect the environmental values associated with the marine environment.</p> <p>This guideline applies to State’s coastal waters and estuaries, including boat harbours and canals that are contiguous with the marine environment.</p> <p>This guideline was applied when defining and identifying the environmental values for the factor Marine Environmental Quality.</p> <p>The request for change is to extend the Time Limit for Proposal Implementation. The proponent has advised there is no change to the existing authorised extent of the proposal.</p>
	Technical Guidance – Protecting the Quality of Western Australia’s Marine Environment (December 2016).	No	<p>The purpose of this technical guidance is to:</p> <ul style="list-style-type: none"> • assist proponents to design fit-for-purpose modelling and monitoring programs to spatially define, assess and manage potential impacts of their proposal on marine environmental quality, and • ensure proposals that have the potential to significantly affect marine environmental quality are described and assessed in a sound and consistent

Process/ Factor/s	Policies and guidelines considered relevant	Applied Yes/No	Comments
			<p>manner that demonstrates how the EPA's objective for the Factor 'marine environmental quality' will be met.</p> <p>This technical guideline was considered but not applied. Implementation condition 8 of Ministerial Statement 906 requires the proponent to prepare a Channel and Marina Management Monitoring Plan. Implementation condition 8 includes site-specific requirements with regard to monitoring and management of water quality and sediment quality.</p>
Marine Fauna	Environmental Factors Guideline – Marine Fauna (December 2016).	Yes	<p>The purpose of this guideline is to communicate how the factor Marine Fauna is considered by the EPA in the EIA process.</p> <p>Marine fauna are also animals that either leave or enter the ocean for breeding or resting purposes, such as turtles, seals and sea lions, penguins, and crabs. Other animals such as seabirds can also be considered as marine fauna as they rely on fish and other marine life for food.</p> <p>This guideline was applied when defining and identifying the environmental values for the factor Marine Fauna.</p> <p>The proponent has advised there is no change to the existing authorised extent of the proposal. The request for change is to extend the Time Limit for Proposal Implementation.</p>

RECOMMENDED ENVIRONMENTAL CONDITIONS

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

POINT GREY MARINA

Proposal: The proposal is for the construction of an onshore marina (and associated boating infrastructure e.g. boat pens, jetties, navigational aids, entrance channel, protective groynes, public boat ramps and car parks) on the western side of the Point Grey peninsula. The proposal also includes the construction of a 2.5 kilometre navigation channel across the Harvey Estuary from the marina to the Dawesville Channel.

Proponent: Point Grey Development Company Pty Ltd
Australian Company Number 122 607 845

Proponent Address: Level 2, 129 Melville Parade
COMO WA 6152

Assessment Number: 2106

Report of the Environmental Protection Authority: 1595

Previous Assessment Number: 1751

Previous Report Number: 1420

Preceding Statement/s Relating to this Proposal: 906

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. 906, be changed as specified in this Statement.

Condition 3 changed

Condition 3 of Ministerial Statement 906 is deleted and replaced with:

3 Time Limit for Proposal Implementation

3-1 The proponent shall not commence implementation of the proposal after 28 June 2019, and any commencement, prior to this date, must be substantial.

3-2 Any commencement of implementation of the proposal, on or before 28 June 2019, must be demonstrated as substantial by providing the CEO with written evidence, on or before 28 June 2019.

*“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.

Hon Stephen Dawson MLC

MINISTER FOR ENVIRONMENT; DISABILITY SERVICES