

Section 39A(7)

PUBLIC ADVICE

Proposal: Demolition and reconstruction of the Esperance Tanker Jetty

Proponent: Shire of Esperance

Decision: **Not Assess**

The EPA acknowledges the social importance the Esperance community places in the Esperance jetty as expressed in the many public comments the EPA received on the proposal to deconstruct the existing jetty and construct a replacement jetty. This includes the heritage values, relating to the structure and the historical record, amenity values and cultural associations such as recreational and commercial activities.

However, having considered the information from the proponent and the public comments, the EPA considers that the proposal is unlikely to have a significant impact on the environment and does not warrant formal assessment.

Background:

On 6 December 2018, as a third party, the Friends of the Esperance Tanker Jetty referred the proposal by the Shire of Esperance to demolish the heritage listed Esperance Tanker Jetty, to the Environmental Protection Authority (EPA) under section 38 of the *Environmental Protection Act 1986* (EP Act). The EPA subsequently sought clarification from the proponent and confirmed that the Shire of Esperance's proposal was for demolition of the Existing Tanker Jetty and construction of a replacement jetty. The proposal includes the deconstruction of the State heritage listed Esperance Tanker Jetty as it has fallen into disrepair and was no longer viable for the Shire to maintain. The Shire also proposes to construct the replacement jetty in close alignment with the old structure, extending 400m of the jetty's original 512 m length. It is intended to retain the old piles of the Tanker Jetty in-situ, and incorporate heritage components, interpretation nodes and improved public facilities.

The proposal was advertised for public comment and the EPA notes that 156 public comments were received. The key issue raised included:

- the time frame between deconstruction and construction causing a temporary change in environmental conditions (light, shade, shelter) and potentially impacting the marine life below;
- the replacement jetty is proposed to be 112 m shorter than the Tanker Jetty's existing length resulting in impacts to visual amenity, heritage values and a

change in environmental conditions in the newly exposed area, potentially leading to impacts to marine life;

- loss of cultural heritage with demolition of the Tanker Jetty and the introduction of steel and concrete in the design of the replacement jetty;
- impacts to leafy sea dragons; and
- the Black Faced Cormorant *Phalacrocorax fuscescens* are currently known to inhabit the remaining structures above water.

The Esperance Shire Council has undertaken consultation in developing the proposal which has included making it available for public comment and establishing community representation to develop the concept plan and accommodate the community's contemporary uses of the jetty.

The Heritage Council Western Australia (Heritage Council WA) after evaluating the cultural heritage significance of the Tanker Jetty, the proposed deconstruction methodology and the concept plans for a replacement jetty has indicated its support for the proposal to deconstruct the Tanker Jetty and construct a replacement jetty.

The EPA notes the engagement of the Shire with the local community, the appointment of a heritage architect, the engagement of the Shire with the Heritage Council WA and the proposal being subject to the requirements of the *Heritage of Western Australia Act 1990* (Heritage Act), the EPA considers that the heritage matters concerning the proposal to deconstruct and construct a replacement jetty have been appropriately considered.

The impacts on the deconstruction of the Tanker Jetty and the construction of the replacement jetty are discussed further below.

Relevant Statutory and Administrative Provisions

The EPA has considered the proposal in accordance with the requirements of the EP Act and the *Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2016* and *Environmental Impact Assessment (Part IV Divisions 1 and 2) Procedures Manual*.

Materials considered in making this decision

The EPA has considered and had regard to the referral information, which is available on the EPA's website, any comments received during the 7-day comment period, information conducted through its own inquiries and any further information requested from the proponent and government agencies.

Consideration

In making its decision on whether to assess the proposal, the EPA had regard to various matters, including the following (as outlined in the EPA's *Statement of Environmental Principles, Factors and Objectives*):

- a) values, sensitivity and quality of the environment which is likely to be impacted;
- b) extent (intensity, duration, magnitude and geographic footprint) of the likely impacts;

- c) consequence of the likely impacts (or change);
- d) resilience of the environment to cope with the impacts or change;
- e) cumulative impact with other existing or reasonably foreseeable activities, developments and land uses connections and interactions between parts of the environment to inform a holistic view of impacts to the whole environment;
- f) level of confidence in the prediction of impacts and the success of proposed mitigation; and
- g) public interest about the likely effect of the proposal, if implemented, on the environment, and public information that informs the EPA's assessment.

In considering the potential direct and indirect impacts of the proposal on **Social Surroundings (noise, heritage and social values), Benthic Communities and Habitats, and Marine Environmental Quality**, the EPA has had particular regard to:

Deconstruction Impacts

Deconstruction of the Tanker Jetty has the potential to result in:

- the loss of cultural heritage associated with the original timber structure;
- impacts to the social values including public amenity and, recreational and commercial activities;
- noise to the local community;
- direct, but highly localised impacts to marine flora and fauna due to:
 - disturbance from deconstruction activities; and
 - degradation of benthic communities due to changes in the sheltered environmental conditions beyond the 400 metre (m) length of the replacement jetty up to the 512 m length where no replacement jetty would be constructed, once the current Tanker Jetty is removed.
- need to recover salvageable materials and dispose of inert materials other than to the marine environment; and
- management of hydrocarbons and contaminants that have the potential to contaminate the marine environment.

In response to the above deconstruction impacts the EPA has had particular regard to:

- the cultural heritage, amenity and social values associated with the Tanker Jetty are highly valued by the local community of Esperance:
 - the closure of the of Tanker Jetty since 2015 due to public safety concerns over its structural condition currently limits the jetty's uses and hence the social values including public amenity and, recreational and commercial activities;
 - Esperance Shire Council community consultation has included making it available for public comment and establishing community representation to have input into the development of the concept plan to incorporate the community's contemporary uses of the jetty. A heritage architect has also been engaged by the Shire of Esperance to ensure proper consideration of heritage matters and facilitation of robust and enforceable plans to meet the

- requirements of the Heritage Council Western Australia (Heritage Council WA) and the Heritage Act;
- the Heritage Council WA is the State Government's advisory body on heritage matters and a key advisor to the EPA on heritage matters;
 - the registration of the Tanker Jetty on the State Heritage Register. The Register of Heritage Places – Assessment Documentation lists the Aesthetic, Historic, Scientific and Social value of the Tanker Jetty. It also describes the Degree of significance, Representativeness, Condition, Integrity and Authenticity;
 - a Conservation Order is in place for the Tanker Jetty that prohibits demolition until an agreed design solution meets the requirements of the Heritage Council WA;
 - retention of cultural heritage through construction of the heritage section and interpretation nodes paying homage to the jetty's original timber structure and cultural significance;
 - the Heritage Council WA, after evaluating the cultural heritage significance of the Tanker Jetty, the proposed deconstruction methodology and the concept plans for a replacement jetty has indicated its support for the proposal to deconstruct the Tanker Jetty and construct a replacement jetty;
 - the Heritage Council WA has advised the Shire of Esperance that it is to recommend that the Minister for Heritage issue a section 64 Permit under the Heritage Act, allowing the deconstruction and replacement of the tanker Jetty;
 - the Conservation Order will remain in place until the replacement jetty is constructed to ensure that the requirements of the Heritage Act can continue to apply and be given effect;
 - the engagement of the Shire with the local community, the appointment of a heritage architect, the engagement of the Shire with the Heritage Council WA and the proposal being subject to the requirements of the Heritage Act 1990, the EPA considers that the heritage matters concerning the proposal to deconstruct and construct a replacement jetty have been appropriately considered;
- the Shire's commitment to specific mitigation strategies, management actions and procedural controls to avoid and minimise impacts including:
 - retention of the old timber jetty piles in-situ at mean sea level for the length of the old structure and three metres below the lowest astronomical tide past the end of the replacement structure so that disturbance to the seabed and the marine biota colonised on the old jetty piles will be minimised;
 - the expected short duration of deconstruction (4-6 months) and construction (6 months), with a commitment to a minimum timeframe for the new jetty to be completed within two years (conditional of the proposed section 64 Permit under the Heritage Act);

- the Shire's tender requirement for the contractor to implement an Environmental Management Plan (EMP), compliant with Regulations and industry standards, to avoid and minimise impacts to the environment;
- construction activities which includes dismantling or demolition are subject to the *Environmental Protection (Noise) Regulations 1997* which specifies works to be carried out in accordance with control of environmental noise practices set out in section 4 of AS 2436-2010 Guide to noise and vibration control on construction, maintenance and demolition sites. The Noise Regulations may require the preparation of a Noise Management Plan as a component of the EMP.
- the need for advice to be sought from the local office of the Department of Biodiversity Conservation and Attractions (DBCA) regarding the Black Faced Cormorant *Phalacrocorax fuscescens* (Listed marine species under *Environment Protection Biodiversity Conservation Act 1999*) specifically, measures to prevent the species breeding on the structures during the period of proposed demolition.

Construction Impacts:

Construction of the replacement jetty has the potential to result in:

- impacts to marine fauna:
 - including Australian Sea Lions, dolphins and whales from underwater noise and vibration from installation of jetty piles;
- from changes to marine environmental quality or benthic communities and habitat;
- impacts to benthic communities and habitats from:
 - piling and construction activities causing direct impacts to benthic communities or indirect impacts from changes in marine environmental quality;
- impacts to marine environmental quality from:
 - minor and temporary increased turbidity or sedimentation caused by pile driving and construction activities;
- impacts to the marine environment from Introduced Marine Pests (IMP); and
- impacts to heritage values with the introduction of replacement jetty;

In response to the above construction impacts the EPA has had particular regard to:

- the community's input in the design of the replacement jetty;
- retention of cultural heritage through construction of the heritage section and interpretation nodes paying homage to the jetty's original timber structure and cultural significance;
- the predicted increase in sedimentation and turbidity in the vicinity of the piling activities is expected to be minor, sporadic in nature, highly localised and dissipate quickly;

- the relatively small geographic footprint of direct impacts to benthic communities;
- the ability of affected benthic communities to recover within a reasonable timeframe and their likelihood to recolonise under and on the replacement structure;
- Leafy sea-dragons (*Phycodurus eques*) have been observed within the close vicinity of the jetty and particularly within the artificial reef located beyond the end and outside the jetty canopy. The EPA notes that:
 - the species typically inhabit rocky reefs, seaweed beds, seagrass meadows and on sand patches near weed covered reefs along the southern coastline of Australia, from Jurien Bay Marine Park to Wilsons Promontory in Victoria. While any seagrass beneath the pylons may provide habitat, the jetty pylons covered in soft corals are not likely to represent the preferred habitat of leafy sea-dragon
 - that the risk of impacts to seagrass, as potential habitat for leafy sea-dragon, from the new jetty piling is expected to be small, highly localised and have the capacity to recover within a reasonable timeframe
- the potential introduction of IMPs can be sufficiently mitigated through procedural controls, primarily inspection and cleaning of marine based piling equipment before it is deployed to Esperance;
- the Shire's commitment to specific mitigation strategies, management actions and procedural controls to avoid and minimise impacts including:
 - new piles will be placed at maximum distances apart to minimise the number of new piles required in the construction of the new jetty;
 - works will be undertaken as close to existing infrastructure as possible;
 - construction methodology allows for the retention of old timber jetty piles in-situ to reduce disturbance to the seabed and marine flora and fauna;
 - the Shire's tender requirement for the construction contractor to implement an Environmental Management Plan, compliant with industry standards, to avoid and minimise impacts to the marine environment and social surroundings;

In summary, although the proposal raises a number of environmental issues, the EPA considers that its objectives for **Social Surroundings, Benthic Communities and Habitats, Marine Environmental Quality, and Marine Fauna** can be met.

This is primarily on the basis of the Heritage Council WA support for the Shire of Esperance's proposed design of the replacement jetty (in letter dated 23 May 2019 in the referral documentation) and deconstruction methodology following the uptake of its recommendations (in letter dated 2 May 2019 included in the referral documentation). The environmental impacts of deconstruction and construction are highly localised, small in scale, temporary and can be sufficiently managed through Environmental Management Plans required of the Shire's contractors undertaking the work.

As a result, the EPA considers that the proposal is unlikely to have a significant impact on the environment and does not warrant formal assessment. The potential impacts from the proposal can be adequately managed through the implementation of the proposal in accordance with the referral documentation, the proponent's mitigation measures and dealt with by other statutory processes ie: through the existing Conservation Order and expected issue of a section 64 permit by the Minister for Heritage under the Heritage Act.

1. Advice and Recommendations regarding Environmental Issues

a) Marine Fauna, Marine Environmental Quality and Benthic Communities & Habitats

The EPA notes that the proposal involves potential impacts to Marine Environmental Quality, Benthic Habitats and Communities and Marine Fauna from deconstruction and construction activities, particularly piling activities (as discussed above). The EPA recommends that the Shire of Esperance engage technical expertise to ensure that its proposed Environmental Management Plans are implemented and compliant with industry standards, including but not limited to:

- management of piling impacts to marine fauna including Australian Sea Lions, dolphins and whales. Standard operating procedures for piling to reduce risks to marine fauna are to have regard for seasonal use of area by species, soft start procedures, the need for marine fauna observers and shut-down procedures in the event marine mammals come within shut-down zones. Specific advice on the management measures to apply to this proposal should be sought from the local office of DBCA;
- advice to be sought from the local office of the DBCA regarding the Black Faced Cormorant *Phalacrocorax fuscescens* (listed marine species under *Environment Protection Biodiversity Conservation Act 1999*) specifically, measures to prevent the species breeding on the structures during the period of proposed demolition. These measures are to be incorporated into the EMP;
- management, disposal and storage of hazardous materials to Australian Standards and consistent with MSDS;
- spill kits available on all piling vessels and staff trained in their use;
- solid waste to be placed in suitable containers and recycled or disposed of via a licensed contractor; and
- all non-local vessels associated with piling should be inspected for IMPs and if necessary, cleaned prior to being mobilised to Esperance.

In view of the above, the EPA considers the proposal, implemented consistent with the Final Concept Design Plans, the referral information and the proposed Environmental Management Plans (to include management and mitigation measures compliant with industry standards), is not so significant as to warrant formal assessment.

b) Social Surroundings

The EPA notes that the proposal involves potential impacts to Social Surroundings in the context of noise impacts to the local community, amenity and cultural heritage (as discussed above).

The EPA notes that piling and construction activity and noise levels impacting on the local community will be compliant with the proposed Environmental Management Plans (as implemented and to include management and mitigation measures compliant with industry standards), and the *Environmental Protection (Noise) Regulations 1997*.

The Heritage Council WA after evaluating the cultural heritage significance of the Tanker Jetty, the proposed deconstruction methodology and the concept plans for a replacement jetty has indicated its support for the proposal.

The EPA notes the engagement of the Shire with the local community, the appointment of a heritage architect, the engagement of the Shire with the Heritage Council WA and the proposal being subject to the requirements of the Heritage Act, the EPA considers that the heritage matters concerning the proposal to deconstruct and construct a replacement jetty have been appropriately considered.

In view of the above, the EPA considers the proposal, implemented consistent with the Final Concept Design Plans, the referral information and the proposed Environmental Management Plans (to include management and mitigation measures compliant with industry standards), is not so significant as to warrant formal assessment.