

Save Ralphs Bay Inc. Submission to the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999.

Background

Save Ralphs Bay Incorporated (hereafter referred to as “SRB”) welcomes the opportunity to contribute to this, the first review of the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (hereafter referred to as the “EPBCA”). SRB formed at a public meeting in March 2004 with a concern for protecting Tasmania’s coastline from inappropriate development, particularly the excavation of a large swathe of the Ralphs Bay sandflats for construction of Tasmania’s first canal estate at Lauderdale, by Walker Corporation Pty Ltd.

SRB's constitutional objectives are to oppose this and any other inappropriate developments at Ralphs Bay, to work towards enhanced protection of the natural, aesthetic and community values of Ralphs Bay and to promote an approach to coastal planning in Tasmania that will prevent future inappropriate developments in coastal areas.

SRB provides well researched information to appropriate bodies and maintains an open, up-to-date information base for supporters on the progress of decision making regarding Walker Corporation’s proposals.

In support of its stated objectives, SRB has networked widely, researched many issues and maintained a strong public information campaign through media liaison, public information evenings with expert speakers, community expo days, rallies in Hobart’s City Hall, information stalls in the community and at the national Coast to Coast Conference, newsletters, a web site, political lobbying at all governmental levels and preparation of numerous submissions.

SRB will endeavour to comment on matters related to Biodiversity and Protected Areas in the review’s Discussion Paper. Questions 11-19 from the Chapter “Biodiversity” are answered as well as questions 25-30 from the chapter “Protected Areas”. A major purpose of the EPBCA is bilateralism between State and Federal governments for the purpose of maintaining and protecting biological diversity within the realm of environmentally sustainable development (ESD). SRB believes that there are parts of the legislation which, if strengthened, would improve this cooperative approach to environmental management.

The Ralphs Bay Conservation Area is a State protected area listed under the Tasmanian Nature Conservation Act 2002. It is also mentioned on the National Heritage Register as an “indicative place” with the nearby and adjacent Ralphs Bay Racecourse Flats Bird Habitat registered. Though not listed on the Ramsar List of Wetlands of National Importance, the Ralphs Bay Conservation Area (and greater bay) provides habitat for a variety of migratory birds such as the Double-banded Plover (*Charadrius bicinctus*) and the Red-necked Stint (*Calidris ruficollis*) and resident birds such as the Pied Oystercatcher (*Haematopus longirostris*) and the Red-capped Plover (*Charadrius ruficapillus*). These avian species travel between Ralphs Bay and nearby Ramsar-listed sites such as Pittwater-Orielton Lagoon (Site code 67767) as an ecological community. Woehler states: “Ralphs Bay is the most important site for resident shorebirds in (the) Bruny Bioregion and a high priority site in (the) Derwent-Pitt Water/Orielton Lagoon network for migratory species”, further, “all inter-tidal

areas in Ralphs Bay should be protected as foraging areas for resident and migratory shorebirds” (2006: 10). SRB is aware that several of Tasmania’s migratory bird species are listed under the EPBCA under the International JAMBA and CAMBA Conventions. The EPBCA-listed *Calidris ruficollis* is one example of a protected migratory bird that frequents Ralphs Bay.

Presently, Ralphs Bay, and specifically, the Ralphs Bay Conservation Area, is in a state of uncertainty with regard to legal environmental protection. The EPBCA should epitomise the ultimate in legislative bilateralism for the purpose of national environmental protection and biodiversity conservation. In the case of Ralphs Bay, the EPBC Act 1999 is failing this objective. Though the EPBCA accounts for Commonwealth protected areas, it does not account for State protected areas. While it accounts for both migratory and threatened species within this protected area of the Crown, it does not protect the bay as a whole, despite Ralphs Bay acting as support and conduit to migratory (EPBCA-protected) and resident avian species of the nearby Pittwater-Orielton Lagoon (protected under the EPBCA as a Ramsar site). Though it is possible Ralphs Bay has national heritage significance (as evidenced by its listing as “indicative place” on the National Heritage Register), this possibility has not been investigated thoroughly.

Biodiversity

Q9 Does the Act provide an effective regulatory framework for the conservation of Australia’s biodiversity? If not, what improvements could be made?

The Act appears sufficient for Commonwealth matters but not for those of Australia’s states. As mentioned, the Ralphs Bay Conservation Area houses many Matters of National Environmental Significance (hereafter referred to as “MNES”), but is, in itself, afforded less Commonwealth protection than the fauna it houses. This review of the EPBCA should consider the problem of Commonwealth matters within Crown land, and possibly give Crown protected areas Commonwealth protected area status where relevant MNES merit such a listing.

Q10 What are your views on the process for nominating threatened species, ecological communities and key threatening processes?

It appears imperative that in the process of nominating a species one should also consider its ecological community. That is, while a species can be considered threatened; the threat to this species is also a threat to its ecological community. In nominating, the EPBCA needs to give more weight to the cumulative impacts of a threatening process. SRB believes matters such as sea level rise (climate change) and wetlands of national importance, should be added to the EPBCA’s list of MNES.

Q11 Given the length of time required for the assessment of nominations, should the Act allow for the emergency listing of species and ecological communities which may be threatened (similar to the provisions for the emergency listing of National Heritage places)? Would the advantages of this be outweighed by the financial and administrative costs?

Certainly, the emergency listing of MNES should be consistent and should include not only National heritage places but also possible threatened species and ecological communities. As

seen in the case of Ralphs Bay, heritage places often also contain threatened species and ecological communities; all should be listed and urgently if necessary.

Q12 What matters should the Minister consider when deciding whether to list a threatened species or ecological community?

The Minister should consider not only that specific species or place but the interrelatedness of species, ecological communities and biological processes. As already stated, Ralphs Bay is part of the larger Derwent Estuary ecological system, which, in turn, is part of larger ecological systems such as the Bruny Bioregion. As the Pittwater-Orielton Lagoon site is listed under the Ramsar Convention, associated, supporting wetlands such as Ralphs Bay should also be given provision under the Act as MNES.

Q13 Are the categories of threat appropriate?

The categories of threat are appropriate but listings of species are inconsistent across State, Commonwealth and IUCN Red List of Threatened Species listings. The conservation of the Spotted Handfish (*Brachionichthys hirsutus*) is a matter of tremendous import for SRB and other government and non-government bodies seeking adequate ecological protection of Tasmania's Derwent Estuary. At present, the Spotted Handfish is listed as "endangered" under State and Commonwealth legislation but as "critically endangered" on the IUCN's Red List of Threatened Species. SRB believes that these listings should be consistent and ultimately, both State and Commonwealth lists should update the spotted handfish listing to "critically endangered". Lists must be kept up-to-date.

Protected Areas

Q25 What factors should the Minister have regard to when making a decision on heritage listing?

The Minister should give due regard to all matters of anthropological and ecological heritage. This includes regard for factors of indigenoussness, including indigenous history as well as European history. Presently, the Ralphs Bay Conservation Area status on the Register of the National Estate is that of "indicative place". It appears that further information is required on the site's heritage before a registration can be made. In the interests of Ecologically Sustainable Development, the possible heritage status of a place needs to be determined before further human development can take place. In the absence of evidence negating a site's heritage listing, the heritage of that place should be considered a MNES until the status of "indicative place" is rectified, in keeping with the Precautionary Principle as mentioned on page 5 of the review's Discussion Paper. In the absence of an expeditious nomination by the State, the Commonwealth Minister should act to clarify a site's heritage status.

Q26 What are your views on the process for nominating and listing Commonwealth Heritage and National Heritage places?

At present it appears that the Ralphs Bay Conservation Area inhabits something of a "grey area" regarding its heritage status. In this respect, the nominating and listing of heritage places is inadequate, in so much as it appears that it is the responsibility of a State

government to nominate, and whilst the Ralphs Bay Racecourse Flats site was registered in 1996, it appears nothing has been done with the “Ralphs Bay Conservation Area and Adjacent Area” nomination since. SRB believes this nomination should be resolved for the sake of other MNES at the Ralphs Bay Conservation Area and Adjacent Area site. Again, it appears that the EPBCA fails to address cumulative impacts or the interrelatedness of environmental and social issues.

Q27 What are your views on the effectiveness and utility of Commonwealth heritage strategies and management plans for protecting World, National and Commonwealth Heritage values?

Not applicable to SRB.

Q28 Given that the protection and conservation of Australia’s heritage is shared between the different levels of government, are there any improvements in the current legislative arrangements that would be of benefit?

The current situation sees the Ralphs Bay Conservation Area as a State protected area, a possible National Heritage area and a site that ecologically supports a local Ramsar-listed site. That is, while it is managed by the State, it has values of national importance to be managed by the Commonwealth. Such bilateralism does not currently appear effective as evidenced through current contestation of the conservation values of Ralphs Bay. The EPBCA requires a mechanism for considering sites holistically in terms of all relevant matters of national, state and local significance.

The Tasmanian state government, in fact, gave the Walker Corporation an In-Principle Commitment in 2004 that it would sell the Crown Land of the Ralphs Bay Conservation Area to the developer in order for the sandflats within the Conservation Area to be bulldozed into a canal estate development, if the Corporation can obtain the necessary approvals for this. It would be an improvement if Commonwealth protection provided an effective backup under circumstances where state governments show undue enthusiasm in regard to the sale of areas of Crown land with high conservation values.

Q29 What are your views on the effectiveness of the operation of the provisions for Ramsar wetlands and the utility of management plans for those wetlands?

It is the belief of SRB that the EPBCA should not only account for Ramsar-listed wetlands within the Act’s MNES but also related wetlands that support the biodiversity both the Ramsar Convention and the EPBCA aim to protect. This should include those wetlands listed on the *Directory of Important Wetlands in Australia*. SRB seeks to have Ralphs Bay listed on this national directory and also seeks to have all nationally-listed wetlands become MNES under the EPBCA. This matter is directly related to Term of Reference 2 (c) which refers to: “the appropriateness of current Matters of National Environmental Significance”. A proximal wetland supporting a Ramsar-listed site (ecologically and biologically) should be considered a MNES in itself and duly managed in the management plans for that Ramsar site. Utilisation of those management plans should be a State responsibility, but with overriding control via the Commonwealth, particularly in the instance of ineffective or under-utilised management plans.

Tasmania's Department of Primary Industries and Water informs us:

an impact on the ecological character of a declared Ramsar wetland is significant if:

- Areas of the wetland are destroyed or substantially modified; or
- There is a major and measurable change in the natural hydrological regime of the wetland (e.g. change to the timing, duration and frequency of ground and surface water flows to and within the wetland); or
- The habitat or lifecycle of native species dependent upon the wetland is seriously affected; or
- There is a major and measurable change in the physico-chemical status of the wetland (e.g. salinity, pollutants, nutrients, temperature, turbidity); or
- Invasive species are introduced into the wetland.

(DPIW, 2008)

The Ramsar site most relevant to Ralphs Bay, in terms of shared species and proximity is the Pittwater-Orielton Lagoon site. Though Ralphs Bay is not listed under the Ramsar Convention, it is a wetland of importance in that it supports this Tasmanian Ramsar-listed site. Migratory species such as the Red-necked Stint (*Calidris ruficollis*) and the Double-banded Plover (*Charadrius bicinctus*) frequent both sites during Tasmania's summer months. Insufficient conservation of the Ralphs Bay site could lead to the habitat or lifecycle of *migratory* species being seriously affected. SRB asks that this review consider:

- the habitat and lifecycle of native species **and also** migratory species in regard to the management of Tasmanian Ramsar sites, particularly those associated with the Ralphs Bay wetlands,
- that the Act consider not only Tasmanian wetlands officially listed under the Ramsar Convention, but also those wetlands which support the ecological community of those listed, and those listed on the *Directory of Important Wetlands in Australia*. As a crucial accompanying site to the Pittwater-Orielton Lagoon, SRB seeks greater Commonwealth protection for Ralphs Bay than that currently offered within State legislation.

Q30 What are your views on the effectiveness of the provisions for Commonwealth reserves and the utility of management plans for those reserves?

The EPBCA requires a provision specifically related to the revocation of protected area listings (both Crown and Commonwealth). This provision should encompass both Crown and Commonwealth reserves as bilateral legislation and should specifically limit revocation where there are found to be MNES applicable to that protected area. Though the EPBCA currently covers such matters through its provision for Environmental Impact Assessment, it is the belief of SRB that a specific provision is required to best ensure biodiversity conservation.

References:

Tasmanian Department of Primary Industries and Water, 2008: Ramsar Wetlands

www.dpiw.tas.gov.au/inter.nsf/WebPages/RPIO-4Y57KM?open

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Woehler, E.J. 2006: Bruny Bioregion Background Report: Presentation to RPDC, September 2006, Birds Tasmania, Tasmania

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