



# Report and recommendations of the Environmental Protection Authority



## Expansion of the Monkey Mia Dolphin Resort - inquiry under section 46 of the *Environmental Protection Act 1986* to amend Ministerial Statement 709

RAC Tourism Assets Pty Ltd

Report 1603

September 2017

ENVIRONMENTAL PROTECTION AUTHORITY  
REPORT AND RECOMMENDATIONS TO THE MINISTER FOR  
ENVIRONMENT

**EXPANSION OF THE MONKEY MIA DOLPHIN RESORT PROPOSAL -  
INQUIRY UNDER SECTION 46 OF THE *ENVIRONMENTAL PROTECTION  
ACT 1986* TO AMEND MINISTERIAL STATEMENT 709 (ASSESSMENT NO.  
2128)**

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 Expansion of the Monkey Mia Dolphin Resort proposal.

The following is the EPA's Report and Recommendations (No. 1603) to the Minister pursuant to section 46(6) of the *Environmental Protection Act 1986* (the EP Act).

Section 46(6) requires the EPA Report to include:

- a) a recommendation on whether or not the implementation conditions to which the inquiry relates, or any of them, should be changed; and
- b) any other recommendations that it thinks appropriate.

**Background**

The Monkey Mia Dolphin Resort is located within the Shark Bay World Heritage Area, and adjacent to the Monkey Mia Recreation Zone of the Shark Bay Marine Park. Monkey Mia is well known as a tourist destination, the main attraction being the wild dolphins that visit the beach daily to interact with and accept fish from people.

The original resort facilities were established around 1985 and therefore not subject to environmental impact assessment under the EP Act. In 2002 a proposal to expand the existing resort area and increase the capacity from 600 to 1200 overnight guests, provide staff accommodation facilities, and upgrade the wastewater treatment plant (the Expansion of the Monkey Mia Dolphin Resort proposal) was referred to the EPA under section 38 of the EP Act. The EPA assessed the proposal at the level of Public Environmental Review and released its assessment report in February 2005 (EPA Report 1165).

EPA Report 1165 identified the following key environmental factors relevant to the proposal:

- Impacts associated with the proposal's footprint; and
- Ongoing management.

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 Fauna; and
- Social Surroundings.

At the time of the EPA's assessment of the proposal the dolphin interaction area lay within a crown reserve jointly vested in the Shire of Shark Bay and the Executive Director of the Department of Conservation and Land Management (CALM). The EPA considered that the government authority responsible for the management of wildlife in Western Australia should have full responsibility for managing public interactions with the Monkey Mia Dolphins, and recommended that the proposal to expand the resort should not be implemented before the public area for visitor services was vested solely in the Conservation Commission of Western Australia (now the Conservation and Parks Commission).

This has since occurred, and the public area for visitor services and the dolphin interaction area are now within a crown reserve vested solely in the Conservation and Parks Commission, with the Department of Biodiversity Conservation and Attractions (DBCA) responsible for the management of the reserve.

Aside from the issue of ongoing management of the dolphin interaction area, the EPA concluded that the impacts associated with the footprint of the proposal were unlikely to compromise the EPA's objectives, provided there was satisfactory implementation by the proponent of its commitments and the EPA's recommended conditions.

The then Minister for Environment approved the proposal for implementation, subject to the implementation conditions of Ministerial Statement 709 (28 December 2005).

### **Previously Approved Changes to Conditions**

Condition 4 of Ministerial Statement 709 has previously been changed under section 46 of the EP Act in order to extend the authorised timeframe for substantial commencement of the proposal (EPA Report 1452; Ministerial Statement 919 dated 17 December 2012).

The wastewater treatment plant upgrade has since been completed and the proposal is considered substantially commenced.

## **Previously Approved Changes to the Proposal**

In June 2017 the Deputy Chairman of the EPA (under delegated authority from the Minister for Environment) approved changes to the proposal under section 45C of the EP Act. The approved changes include increased clearing of vegetation at the wastewater treatment plant site and the development and use of temporary borrow pits.

## **Requested changes to conditions**

The proponent for the proposal, RAC Tourism Assets Pty Ltd, has requested the following changes to the conditions of Ministerial Statement 709:

- The deletion of condition 6 relating to the protection and management of thick-billed grasswren (*Amytornis textilis textilis*) habitat; and
- Changes to the administrative conditions in order to modernise Statement 709.

## **Application of relevant EPA Policies and Guidelines**

In inquiring into the requested 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.

## **Inquiry into the requested change to conditions**

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 section 46.

## **Inquiry findings**

In conducting this inquiry, the EPA reviewed the information provided by the proponent and sought advice from the Department of Parks and Wildlife (now the DBCA).

In considering whether to recommend the Minister change the conditions relating to the proposal, the EPA considered the potential impacts the deletion of condition 6 would have on the relevant environmental factor of Terrestrial Fauna.

## **Terrestrial Fauna**

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

### *Relevant policy and guidance*

The EPA considers that the following current environmental policy and guidance is relevant to its assessment of the proposed changes to conditions:

- Environmental Factor Guideline - Terrestrial Fauna (EPA, 2016)

Relevantly, this guideline was applied with regard to:

- 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 the terrestrial fauna;
- the current state of knowledge of the affected species/assemblages and the level of confidence underpinning the residual impacts; and
- whether proposed management and mitigation approaches are technically and practically feasible.

Fauna surveys conducted for the original proposal identified several groups of Thick-billed grasswrens that would be impacted by the proposal. At the time of the EPA's assessment of the proposal the Thick-billed grasswren was listed as 'vulnerable' under both the Western Australian *Wildlife Conservation Act 1950* and the Federal *Environment Protection and Biodiversity Conservation Act 1999*.

To allow for the protection of part of a territory of Thick-billed Grasswren, condition 6-1 requires the proponent to retain a buffer of *Acacia* sp. to the south of the resort, approximately 600 metres in length and not less than 15 metres wide. The proposal is located within a Bush Fire Prone Area of Western Australia as designated by the Fire and Emergency Services Commissioner, and the proponent has requested condition 6-1 be deleted as such a vegetated buffer adjacent to the resort would be inconsistent with current bushfire planning requirements (that is State Planning Policy 3.7 Planning in Bushfire Prone Areas (December 2015), and associated Guidelines).

Since the EPA's original assessment of the proposal, the Thick-billed Grasswren has undergone a change in taxonomy/nomenclature and in conservation status. It is now known as the Western Grasswren and is not listed as a threatened species under either State or Federal legislation. The DBCA currently consider it a Priority 4 species.

The Western Grasswren is restricted in range but abundant around the proposal area, and the existing anthropogenic environment may be locally important to the species as it forages in the carparks taking insects from the fronts of cars. The clearing of native vegetation and associated loss of habitat will impact on up to three pairs/groups of Western Grasswrens that currently utilise the expansion areas; however, this is unlikely to constitute a significant impact on the species with the population in the Shark Bay area estimated at 21,500 breeding birds (*Level 1 Fauna Assessment of the proposed Monkey Mia Dolphin Resort Expansion Areas*, Bamford Consulting Ecologists, 2017).

The DBCA advised that there was no objection to deleting condition 6 as the Western Grasswren is no longer considered threatened. The EPA is satisfied that its objective for the environmental factor of Terrestrial Fauna can be achieved without the vegetated buffer required by condition 6 of Ministerial Statement 709, and in view of current bushfire planning requirements the EPA considers that condition 6 can be deleted as requested.

## **Changes to Administrative Conditions**

The proponent has also requested changes to the administrative conditions of Ministerial Statement 709 in order to modernise the Statement. The EPA considers it appropriate to replace conditions 3, 4, and 5 of Ministerial Statement 709 with contemporary standard conditions relating to proponent contact details, compliance reporting, and the public availability of plans and reports.

## **EPA Conclusions and Recommendations**

### ***Conclusions***

In relation to the environmental factors, and in consideration of the information provided by the proponent and relevant EPA policies and guidelines, the EPA concludes that:

- the reduction in the conservation status of the Thick-billed Grasswren has negated the requirement for a vegetated buffer protection area;
- its objective for the environmental factor of Terrestrial Fauna can be achieved without the vegetated buffer required by condition 6 of Ministerial Statement 709; and
- no new significant environmental factors have arisen since the EPA's assessment of the proposal.

### ***Recommendations***

Having inquired into this matter, the EPA submits the following recommendations to the Minister for Environment under section 46 of the *Environmental Protection Act 1986*:

1. That it is appropriate to delete condition 6 of Ministerial Statement 709;
2. That it is appropriate to replace conditions 3, 4 and 5 with contemporary standard conditions relating to proponent contact details (condition 3), compliance reporting (condition 4), and the public availability of plans and reports (condition 5); and
3. That after complying with section 46(8) of the *Environmental Protection Act 1986*, the Minister issues a statement of decision to change conditions 3, 4, 5 and 6 of Statement 709 in the manner provided for in the attached recommended statement.

RECOMMENDED ENVIRONMENTAL CONDITIONS

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

EXPANSION OF THE MONKEY MIA DOLPHIN RESORT

MONKEY MIA, SHARK BAY

**Proposal:** The expansion, incorporating construction and operation of the Monkey Mia Dolphin Resort through expansion of the existing resort area, provision of staff accommodation facilities and upgrading of the wastewater treatment plant, as documented in Ministerial Statement 709.

**Proponent:** RAC Tourism Assets Pty Ltd  
Australian Company Number 168 253 085

**Proponent Address:** 832 Wellington Street  
West Perth WA 6005

**Report of the Environmental Protection Authority:** 1603

**Preceding Statements Relating to this Proposal:** 709, 919

Pursuant to section 45 of the *Environmental Protection Act 1986*, as applied by section 46(8), it has been agreed that the implementation conditions set out in Ministerial Statement No. 709 dated 28 December 2005 (Statement 709) be changed as specified in this Statement.

**1. Condition 3 replaced**

Condition 3 of Statement 709 is deleted and replaced with:

**3 Contact Details**

3-1 The proponent shall notify the CEO\* of any change of its name, physical address or postal address for the serving of notices or other correspondence within twenty eight (28) days of such change. Where the proponent is a corporation or an association of persons, whether incorporated or not, the postal address is that of the principal place of business or the principal office in the State.

## **2. Condition 4 replaced**

Condition 4 of Statement 709 is deleted and replaced with:

### **4 Compliance Reporting**

4-1 The proponent shall prepare, submit and maintain a Compliance Assessment Plan to the CEO within six (6) months of the date of this Statement, or as agreed in writing by the CEO.

4-2 The Compliance Assessment Plan shall indicate:

- (1) the frequency of compliance reporting;
- (2) the approach and timing of compliance assessments;
- (3) the retention of compliance assessments;
- (4) the method of reporting of potential non-compliances and corrective actions taken;
- (5) the table of contents of Compliance Assessment Reports; and
- (6) public availability of Compliance Assessment Reports.

4-3 After receiving notice in writing from the CEO that the Compliance Assessment Plan satisfies the requirements of condition 4-2 the proponent shall assess compliance with conditions in accordance with the Compliance Assessment Plan required by condition 4-1.

4-4 The proponent shall retain reports of all compliance assessments described in the Compliance Assessment Plan required by condition 4-1 and shall make those reports available when requested by the CEO.

4-5 The proponent shall advise the CEO of any potential non-compliance within seven (7) days of that non-compliance being known.

4-6 The proponent shall submit to the CEO the first Compliance Assessment Report fifteen (15) months from the date of issue of this Statement addressing the twelve (12) month period from the date of issue of this Statement and then annually from the date of submission of the first Compliance Assessment Report, or as agreed in writing by the CEO.

The Compliance Assessment Report shall:

- (1) be endorsed by the proponent's CEO or a person delegated to sign on the CEO's behalf;
- (2) include a statement as to whether the proponent has complied with the conditions;



- (3) identify all potential non-compliances and describe corrective and preventative actions taken;
- (4) be made publicly available in accordance with the approved Compliance Assessment Plan; and
- (5) indicate any proposed changes to the Compliance Assessment Plan required by condition 4-1.

**3. Condition 5 replaced.**

Condition 5 of Statement 709 is deleted and replaced with:

**5 Public Availability of Plans and Reports**

5-1 Subject to condition 5-2, within a reasonable time period approved by the CEO of the issue of this Statement and for the remainder of the life of the proposal the proponent shall make publicly available, in a manner approved in writing by the CEO, all environmental plans and reports required under this statement and Statement 709.

5-2 If any parts of the plans and reports referred to in condition 5-1 contains particulars of:

- (1) a secret formula or process; or
- (2) confidential commercially sensitive information;

the proponent may submit a request for approval from the CEO to not make those parts of the plans and reports publicly available. In making such a request the proponent shall provide the CEO with an explanation and reasons why the data should not be made publicly available.

**4. Condition 6 deleted.**

Condition 6 of Statement 709 is deleted.

\*The Chief Executive Officer of the Department of the Public Service of the State responsible for the administration of section 48 of the *Environmental Protection Act 1986*, or his delegate.