

*Environmental Protection Act 1986*

**Section 39A(7)**

**PUBLIC ADVICE**

**Proposal:** Cottesloe Pier

**Proponent:** Cottesloe Pier Pty Ltd

**Decision:** **Not Assessed – Public Advice Given**

The EPA considers that the proposal is unlikely to have a significant impact on the environment and does not warrant formal assessment.

**Background:**

On 21 March 2016, Cottesloe Pier Pty Ltd referred the Cottesloe Pier proposal to the Environmental Protection Authority (EPA) under section 38 of the *Environmental Protection Act 1986* (EP Act). The proposal includes the construction of a piled structure including an underwater observatory, café with promenade area and associated public facilities including a swimming area and fishing jetty along and extending beyond the existing rock groyne at Cottesloe Beach.

The proposal was advertised for public comment and the Environmental Protection Authority (EPA) notes that 14 public comments were received. Key issues raised in the public submissions included: impacts to the Cottesloe Reef Fish Habitat Protection Area and marine fauna including the Leafy and Weedy sea dragons; impacts to coastal processes and resulting changes to surf breaks and swimming; increased visitor numbers and resulting pollution, traffic and access issues; and changes to the visual amenity and sense of place of Cottesloe Beach.

At the time of referral, the EPA considered that it did not have enough information regarding the potential impacts of the proposal to make a decision as to whether or not to assess the proposal, and if so the level of assessment. Since March 2016 the EPA has requested further information from the proponent, which has resulted in the provision of technical studies including a Wave Impact Study (Advisian, 2016) and Coastal Processes and Sedimentation Impact Study (Advisian, 2017). The EPA has also requested and received advice from other relevant Government agencies including the Department of Primary Industries and Regional Development (formerly Department of Transport and Department of Fisheries), the Department of Biodiversity Conservation and Attractions (former Department of Parks and Wildlife), the Department of Aboriginal Affairs, and the Town of Cottesloe.

### **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 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 consultation hub, 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 projects
- f) connections and interactions between parts of the environment to inform a holistic view of impacts to the whole environment
- g) level of confidence in the prediction of impacts and the success of proposed mitigation
- h) public information that informs the EPA's consideration of the likely effect of the proposal, if implemented, on the environment

In considering the potential direct and indirect impacts of the proposal on the Flora and Vegetation; Benthic Communities and Habitat; Coastal Processes; Marine Environmental Quality; Marine Fauna; and Social Surroundings (Aboriginal Heritage and Amenity), the EPA has had particular regard to:

- the high values of the environment including the Cottesloe Reef Fish Habitat Protection Area, and the existing Cottesloe Beach locality which is a highly modified coastal environment;
- the proponent's measures to avoid and minimise impacts to benthic habitats and communities and coastal processes by designing an open piled structure which is an extension to the existing rock groyne at Cottesloe beach, and located in an area of bare sand;
- the duration and temporary nature of the impacts associated with pile driving which are expected to occur within a 4-8 week period; .

- the results of studies undertaken by the proponent to determine the extent and consequences of the proposal to coastal processes which are predicted to be minor, with no impacts predicted south of the groyne at the Cottesloe Reef;
- the mitigation strategies proposed by the proponent to avoid and minimise impacts, for example the development and implementation of;
  - a Construction and Environmental Management Plan to minimise impacts to Marine Environmental Water Quality;
  - Marine Fauna Management Measures; and
  - Coastal Processes Monitoring and Management Measures.
- the advice from the Department of Primary Industry and Regional Development (DPIRD) that:
  - the impacts to Cottesloe Beach as a result of any change to coastal processes are expected to be minor and recommendations that a Coastal Monitoring and Management Plan be developed.
  - the preparation of a Construction and Environmental Management Plan could address concerns related to water quality monitoring programs, the use of a silt curtain, the use of lighting and biosecurity measures.
  - an approval for anchoring within the Fish Habitat Protection Area during the construction period would also be subject to assessment, and the proponent should consult with the Fisheries Division in this regard.
- the advice from the Department of Biodiversity, Conservation and Attractions that risks to marine fauna during construction could be managed through the implementation of operational procedures including restricting piling to daylight hours; engaging experienced marine fauna observers; soft start up procedures and stop work triggers associated with defined buffer zones that are monitored prior to and during all piling operations; and avoidance of peak fauna migration periods.
- the advice from the Department of Aboriginal Affairs (DAA) that the proposal overlaps two known Aboriginal heritage places:
  - Registered Aboriginal site DAA 435 (Moonderup); and
  - DAA 3776 (Indian Ocean) – Stored data.

The DAA also advised that the proponent would need to consult with the Aboriginal community and Native Title claimants prior to determining the need for consent under the *Aboriginal Heritage Act 1972*.

- the advice from the Town of Cottesloe (the Town) that:
  - as the proposal is located in a Parks and Recreation reservation under the Metropolitan Region Scheme it would require planning approval from the Western Australian Planning Commission (WAPC), and that the WAPC policies in relation to the environment, coastal planning and development would be important considerations.

- the proponents proposed coastal monitoring and management plan should have regard to the Town's 2008 study *Vulnerability of the Cottesloe Foreshore to the Potential Impacts of Climate Change*, and to the Town's ongoing coastal monitoring program. The Town also advised that in the event that the proposal proceeds they would modify its program to take account of it in their monitoring methodology.
- the Town has not formally considered the proposal, undertaken any community consultation, or made any commitment in relation to it.

The EPA also notes the additional information provided by the Town which identified further issues including impacts to beach goers and planning matters, such as traffic and parking and the effects of the proposal on the Town's controls and responsibilities, which are not relevant considerations for the EPA under the EP Act.

- the minimal (0.012 hectares) clearing of flora and vegetation required to implement the proposal and the small, and already highly modified area of the proposal which intersects the boundary of the Registered Aboriginal Site DAA 435 (Moonderup);
- the presence of other statutory processes that can manage the potential impacts to the identified environmental factors including
  - the requirement to seek planning approval under the *Planning and Development Act 2005*, which includes the ability to consider impacts to visual amenity, and consider the proposal in the context of the *State Planning Policy 2.6. State Coastal Planning Policy*.
  - the requirement to seek approvals to anchor within the Cottesloe Reef Fish Habitat Protection Area under the *Fish Resources Management Act 1994*.
  - the requirement to seek consent under Section 18 of the *Aboriginal Heritage Act 1972*.
- the EPA has not considered social, economic or planning matters which are not relevant considerations for the EPA under the EP Act. These matters will be considered by other relevant decision-making authorities.

In summary, although the proposal raises a number of environmental issues, the EPA considers that its objectives for Flora and Vegetation; Benthic Communities and Habitat; Coastal Processes; Marine Environmental Quality; Marine Fauna; and Social Surroundings (Aboriginal Heritage and Amenity) can be met.

This is primarily on the basis that the predicted extent and consequences of the impacts on the marine and terrestrial environment are minor, because the proposal includes an open-pile structure, is small in scale and located within a highly modified coastal environment. As a result, the EPA considers that the likely environmental effects of the proposal are not so significant as to warrant formal assessment. The EPA is of the view that the potential impacts can be adequately managed through the implementation of the proposal in accordance with the referral documentation, which includes the proponent's management and mitigation measures, implementation of

the EPA's advice given to other relevant decision making authorities, and dealt with by other statutory processes. These include through *Planning and Development Act 2005*, *Aboriginal Heritage Act 1972* and the *Fish Resources Management Act 1994*.

## **1. Environmental Factors**

The EPA has identified the following environmental factors relevant to this proposal:

- a) Coastal Processes;
- b) Marine Environmental Quality; and
- c) Marine Fauna.

There were no factors that were determined to be key environmental factors that would require formal assessment under Part IV of the EP Act. The EPA considers that the mitigation of the potential effects on the environment can be regulated by other statutory decision-making processes and through the implementation of proponent commitments and best practice measures in accordance with this advice.

## **2. Advice and Recommendations regarding Environmental Issues**

### **a. Coastal Processes**

The EPA notes that the Wave Impact Study (Advisian, 2016) and Coastal Processes and Sedimentation Impact Study (Advisian, 2017) commissioned by the proponent have predicted that impacts to coastal processes as a result of the implementation of the proposal are minor and are largely limited to the immediate vicinity of the proposal.

Consistent with advice received from the DPIRD, the EPA recommends that in considering the development application for the proposal that the WAPC require the proponent to prepare and implement a Coastal Processes Monitoring and Management Plan, in order to mitigate any uncertainty in regards to coastal climate, to account for model limitations, and to give effect to the commitments made by the proponent. The plan should be prepared in consultation with the Town of Cottesloe and DPIRD and include, but not be limited to, monitoring both prior to and during construction, and regular post construction monitoring to capture any potential long term impacts up to 10-20 years.

The EPA also notes that scenario modelling undertaken in the Coastal Processes and Sedimentation Impact Study (Advisian, 2017) identified that the movement of the proposal by 10 metres to the west would reduce the extent of erosion between the observatory and the groyne. The EPA expects that the final detailed design be selected to minimise impacts to coastal processes as far as practicable.

## **b. Marine Environmental Quality**

The EPA notes that the proposal is located within the Cottesloe Reef Fish Habitat Protection Area, and that proposal, in particular the construction of the piled structure, has potential to impact marine environmental quality.

The EPA recommends that in considering the development application for the proposal that the WAPC require the proponent to prepare and implement a Construction and Environmental Management Plan, in order to ensure that impacts to marine environmental quality are minimised as far as practicable and to give effect to the commitments made by the proponent. The plan should be prepared in consultation with the DPIRD and include, but not be limited to, measures such as timing of construction, spill management procedures, antifouling requirements, the use of silt curtains during construction and requirements for water quality monitoring.

## **c. Marine Fauna**

The EPA notes that the proposal is located within the Cottesloe Reef Fish Habitat Protection Area, and that proposal has potential to directly and indirectly impact marine fauna, in particular during construction.

The EPA notes that the Cottesloe Reef system contains a diverse range of habitats and supports many different species of marine fauna. The studies undertaken by the proponent predicted that any impacts to coastal processes are limited largely to the immediate vicinity of the proposal and that no impacts to coastal processes were expected to the south of the Cottesloe Groyne. The EPA is of the view that the potential impacts to marine fauna as a result changes to marine environmental quality and direct risks through interactions with marine fauna such as dolphins and sea lions during construction are manageable through the implementation of the below advice.

In addition, the proposal (being an open piled structure) is unlikely to result in permanent impacts to the habitats for the Leafy and Weedy Seadragons which are associated with reef and seagrasses.

The EPA recommends that in considering the development application for the proposal that the WAPC require the proponent to prepare and implement a Construction and Environmental Management Plan and a Marine Fauna Management Plan in order to ensure that impacts to marine fauna are minimised as far as practicable, and to give effect to the commitments made by the proponent.

The Construction and Environmental Management Plan should be prepared in consultation with the DPIRD and include, but not be limited to, measures such as monitoring of fish spawning aggregations, use of lighting and biosecurity measures.

The Marine Fauna Management Plan should be prepared in consultation with the Department of Biodiversity, Conservation and Attractions and include, but not be limited to, measures such as timing of construction, requirements for soft start procedures, marine fauna observers and marine fauna safety buffer zones.



**Tom Hatton**  
Chairman

17 November 2017

