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Plans for commercial development of Rottnest Island challenged

Rebecca Dennison, volunteer, and Jessica Smith, Outreach Solicitor

In April, the Rottnest Island Authority (Authority) released draft plans for how it proposes to manage Rottnest Island for the next five years – the draft *Rottnest Island Management Plan 2014-2019* (Draft Management Plan) and the draft *Rottnest Island Master Plan* (Draft Master Plan).

The draft plans have been controversial. *The West Australian*, for instance, noted that the plans represent '[t]he biggest upheaval of Rottnest in more than a century', will see 'private operators run half the island's accommodation', allow for a 'light-industrial zone near the airport and new eco-tourism accommodation at Mary Cove on the island's isolated southern coast', and represent the 'first time accommodation was allowed within the current boundaries' of the Class A conservation reserve. [Ken Acott, "Private dollars key to future of island", *The West Australian*, p1, 7 April 2014.]

The Rottnest Society – a not-for-profit organisation focused on protecting the natural terrestrial, marine and cultural environment of Rottnest Island and its native plants and animals – sought EDOWA's assistance in preparing comments opposing the draft plans. In June, EDOWA lodged submissions on the Rottnest Society's behalf, setting out its many concerns about the draft plans for the island.

The Society believes the Draft Management Plan is unacceptable in its current form for several reasons. First, the Draft Management Plan contravenes many of the most fundamental objectives and provisions of the *Rottnest Island Authority Act 1987* (WA) (the Act). The Act vests the control and management of Rottnest Island in the

An aerial view of Rottnest Island.
– Skyworx Aviation. http://skyworx.com.au/wp-content/uploads/2013/08/6267542.jpg

Authority for three main purposes, two of which are focused on conservation and direct the Authority 'to protect the flora and fauna of the Island' and 'to maintain and protect the natural environment [...] of the Island'. However, the Draft Management Plan is primarily focused on promoting and expanding tourism on the island. The Draft Management Plan relegates protection of the environment to a secondary goal and only insofar as it will lead to enhancing tourism.

Second, the Draft Management Plan was almost entirely devoid of detail. In that respect it falls well short of complying with the Act, which requires any management plan to contain a 'summary of operations proposed to be undertaken' under the Plan. However, the Draft Management Plan provides so little guidance to the public about what the Authority proposes to do, that it is difficult for the public to provide meaningful comment on its provisions.

Third, the Draft Management Plan is deeply concerning in that many of the broad aims and strategies it sets forth appear to be based largely on information (reports, studies, analyses, etc) that the public has never seen or on plans and strategies that the Authority hasn't even adopted yet, let alone made available for stakeholder review and input. Likewise, the Society questioned the degree to which commercial tourism and business interests were engaged in the process of developing the draft plans, in contrast to the public that was largely shut out from the consultation process.

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EDOWA responds to EPA's environmental assessment of State's proposed shark cull program

Jessica Smith, Outreach Solicitor

Readers of edo*news* will no doubt be aware of the controversial shark cull trial program introduced by the State government earlier this year.

As noted in our May newsletter, the State government now wants to extend its shark cull program and, in April-May, referred a proposed three-year program to the WA Environmental Protection Authority (EPA) and the federal environment department for determination whether an environmental impact assessment of the program is required.

The proposed program involves the setting of up to 60 baited drum lines approximately 1km offshore of selected high use beaches and surfing spots in the metropolitan and southwest coastal regions of WA, between 15 November and 30 April each year, starting in 2014 and ceasing in 2017. In addition, up to 12 drum lines may be deployed "temporarily" in response to sightings of, or incidents involving, targeted sharks. The temporary drum lines may be placed in any State waters (not just the southwest and metropolitan areas), including World and National Heritage-listed areas, marine parks and sanctuaries, and may be placed at any time of year (not just November-April). Sharks targeted under the program are Great White, Tiger and Bull sharks of 3m or more in length. All three species are "totally protected" fish under State law, while Great Whites are also listed threatened and migratory species, protected under federal law.

On 22 April 2014, the EPA decided that the proposed three-year program required environmental impact assessment under the *Environmental Protection Act 1986* (WA) (EP Act). The federal environment department decided in May 2014 that the environmental impacts of the program must be assessed under federal law but the assessment could be conducted by the State EPA. However, the final decision about whether the program could go ahead under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) will be made by the federal Environment Minister.

The full details of the State government's three-year shark cull program were released for public comment between 9 June and 7 July 2014.

EDOWA lodged a detailed 50-page submission to the EPA on Sea Shepherd's behalf, setting out a wide range of reasons why the three-year shark cull program should not go ahead, including:

- there is no credible evidence of shark attacks causing any harm to the State's tourism industry;
- the program is a waste of money – it will cost more than $7 million, based on the State's figures, at a time of falling tax revenues and substantial government cutbacks;
- the State's justification for the program - that it is under a "duty of care" to protect the public by killing large sharks is simply untrue;
- the evidence provided by the State is inadequate and does not support the State's contention that the program will have "negligible" or "minimal" environmental impacts;
- there is no evidence to support the program's purported benefits;
- the State's "public" consultation was inadequate, as it failed to involve important environmental organisations and excluded every local government in the metropolitan coastal area; and
- the State's consideration of alternative measures was cursory and narrow.

The EPA will release its recommendations in coming months on whether the three-year shark cull program should go ahead or not. ■

Drum lines deployed off Cottesloe Beach on 1 February 2014. – Sea Shepherd

York residents oppose Perth waste going to local landfill

Hannah Spivey, volunteer, and Jessica Smith, Outreach Solicitor

EDOWA is assisting the Avon Valley Residents Association (AVRA) which opposes a proposal by SITA Australia Pty Ltd (SITA) to construct and operate a landfill at Allawuna Farm, approximately 18 kilometres west of York. The Allawuna landfill will accept up to 250,000 tonnes per annum of Class II municipal waste generated in Perth. The proposed landfill is located in an agricultural and conservation precinct, approximately 1km east of both Wandoo National Park and the Mundaring Weir catchment, a public drinking water source area.

AVRA's members are concerned about potential adverse environmental, health, aesthetic and economic impacts associated with the operation of the proposed landfill. Most of AVRA's members are residents of the Shire of York and own or occupy properties near the site of the proposed landfill.

On 14 April 2014, the Wheatbelt Joint Development Assessment Panel (Wheatbelt JDAP) issued its decision that, among other things, the proposed landfill was not consistent with the objectives of the Shire of York's General Agricultural Zone, in accordance with the York Local Town Planning Scheme No2. In March, the Shire of York had recommended refusal of the Allawuna landfill on the basis that the social impacts and environmental risks associated with the proposal were unacceptable for the community and the locality.

SITA lodged an application with the State Administrative Tribunal (SAT) on 16 April 2014, seeking review of the Wheatbelt JDAP's decision. The proceedings in the SAT are referred to as *SITA Australia Pty Ltd v Wheatbelt JDAP*, DR 127/2014.

AVRA is eager to participate in these proceedings so that its members can continue to have a say on the Allawuna landfill and has engaged EDOWA to assist with this effort.

The rights of third parties – that is, the public – to participate in planning matters in the SAT are extremely limited. The public has no right to appeal planning decisions to the SAT. There are only two, limited avenues for third party participation in such matters: (1) a third party may be granted leave to intervene in the SAT proceedings, or (2) to lodge submissions regarding the matter. The SAT has a broad discretion to allow third parties to intervene or lodge submissions, but has decided in previous cases that a would-be intervenor must first show s/he has a "sufficient interest" in the matter and that his/her participation will assist the SAT to make an appropriate decision.

EDOWA has applied to the SAT on AVRA's behalf for leave to intervene or at least to lodge submissions in *SITA Australia Pty Ltd v Wheatbelt JDAP*. We argued, amongst other things, that AVRA has a sufficient interest in the matter by virtue of the objects of the association; its large support base within the Shire of York; the strength of members' concerns about the landfill's potential impact on groundwater upon which they are reliant; their significant outlay in retaining expert consultants to conduct geological and hydrogeological studies; the expense in mounting their campaign of opposition; and the many hours of time contributed by AVRA members to the landfill issue.

The next legal hurdle in applying to intervene is that, even if a person is able to demonstrate s/he has a sufficient interest in a matter, the proposed intervenor will generally need to demonstrate that intervention is necessary to enable the SAT to meet the objectives of the relevant legislation, either the *State Administrative Tribunal Act 2004* (WA) or the *Planning and Development Act 2005* (WA). EDOWA submitted that AVRA's request to intervene should be granted so that AVRA may call upon the consultants it retained to shed light on the area's geology, hydrogeology and the potential for surface and groundwater contamination, particularly of the Mundaring Weir catchment. The reports commissioned by AVRA identified empirical deficiencies in SITA's research of the site and the potential for far-reaching contamination of groundwater. Environmental risks were key factors underlying the Wheatbelt JDAP's decision to refuse SITA's application.

The SAT has not yet made a final decision on whether to grant AVRA intervenor status or leave to lodge submission. However, it has so far allowed AVRA (and other, neighbouring residents) to participate in the mediation process – which is a very good outcome in itself. EDOWA will continue to assist AVRA to participate in the SAT process where possible and will no doubt be able to provide an update on SAT's decision in a later edition of edo*news*. ■

Rotto plans challenged

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In addition to the three major concerns above, we also set out a number of specific concerns about particular aspects of the Draft Management Plan. Among other things, the submissions noted the lack of any real accounting for impacts of climate change and managing those impacts in the Draft Management Plan.

In relation to the Draft Master Plan, we advised that the Rottnest Society could not support this plan because it flows from the Draft Management Plan, which the Society emphatically opposes. Like the Draft Management Plan, the Draft Master Plan is short on detail and does not provide any budget estimates. Again, therefore, it is difficult to provide meaningful comment on this draft plan.

EDOWA recommended that the Authority withdraw its draft plans and recommence the process of preparing such plans, with a greater degree of transparency and greater input from stakeholders representing the broader public rather than commercial development and tourism interests. ■

"Streamlining" federal environmental regulation is under way in WA

Rebecca Dennison, volunteer
and Carolyn Dearing, Outreach Solicitor

The Western Australian and Commonwealth governments are actively pursuing a whole-of-government deregulatory policy with the stated aim of reducing regulatory burdens and eliminating what they refer to as "green-tape". Part of this agenda is ostensibly aimed at the simplification and streamlining of regulatory processes applicable to Australia's environmental assets.

Recently EDOWA made a submission to the Commonwealth Department of Environment's Regulatory Reform Taskforce in response to a new draft bilateral agreement between the Commonwealth and the State of Western Australia for accrediting the State's environmental assessment processes. The bilateral agreement forms part of the process for establishing a so-called "one stop shop" for environmental assessments and approvals in Australia. Similar agreements have been negotiated with other states and territories around Australia under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act).

The next stage of environmental deregulation involves the development of bilateral agreements for approvals made under the EPBC Act, a process which has commenced in New South Wales and Queensland. These agreements regulate the accreditation of state and territory environmental approval processes for EPBC protected matters, again purportedly to reduce the administrative burden on industry and eliminate unnecessary regulation. Whilst reducing waste and improved efficiency are legitimate objectives, the draft bilateral agreement between the Commonwealth and the State of Western Australia fails to address several key environmental concerns.

For one thing, the governments' reforms focus heavily on reducing cost and increasing certainty and efficiency rather than ensuring positive environmental outcomes. The community is well aware of the significant funding constraints currently impacting upon the Commonwealth Department of Environment. WA's Environmental Protection Authority – which will take on additional responsibility under the reform programme – is also under-resourced, in our view. The financial constraints placed on each department will inevitably impact on the ability of these entities to fulfil their statutory mandates to protect the environment and biodiversity.

Another significant gap in the one-stop shop agenda is the failure to address significant community concerns about the potential for bias in relation to the assessment of State projects. State involvement in development proposals creates a reasonable perception of bias in environmental assessment and approval processes. The 2009 *Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999* (www.environment.gov.au/system/files/resources/5f3fdad6-30ba-48f7-ab17-c99e8bcc8d78/files/final-report.pdf) recommended that this bias be addressed through the adoption of assessment by public enquiry or via joint panels involving Commonwealth and State representatives. The value of an independent federal regulatory authority that sets environmental standards that would then be implemented by State and Territory bodies has been reiterated by the National Environment Protection Council.To date, however, this recommendation has not been adopted.

It is noteworthy that in 2012 the federal government established the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) (www.nopsema.gov.au/environmental-management/). NOPSEMA was created in response to criticism of the flawed regulatory arrangements between the Commonwealth and States and Territories, the Montara oil spill and ensuing Montara Commission of Inquiry, and repeated calls over many years from experts in the field and the government bodies for a national regulatory regime to govern offshore oil and gas activities.

Whilst there is some merit in streamlining environmental approval processes, the draft bilateral assessment agreement between the Commonwealth and the State of Western Australia focuses primarily on reducing costs and increasing efficiency, and overlooks the importance of consistency and quality in decision-making. Furthermore, funding constraints at both Federal and State levels are likely to have an adverse impact upon the ability of government to adequately implement and monitor the proposed reforms.

The next step in the one-stop shop reforms involves the creation of bilateral agreements for approvals to be made by the states and territories which is likely to encounter similar difficulties with respect to funding, consistency and the and management of perceptions of bias. ■

Thank you for your support

Majella Metuamate, Coordinator

EDOWA sincerely thanks our many friends and supporters for their generous donations during our End of Financial Year Appeal in June. We raised more than $14,500 – a fantastic effort!

Your donations will help us maintain our current level of services so that we can continue to assist the community to protect the environment. Your support is particularly important to us at a time when our Commonwealth funding has been cut.

If you didn't provide a donation as part of our End of Financial Year Appeal, but still wish to contribute, we of course gladly accept donations throughout the year. You can make a donation in one of the following ways:

- Credit card: by visiting www.givenow.com.au/edowa
- Internet banking:
  Environmental Defender's Office WA
  BSB: 036-001 Account: 528987
  Reference: Your name
- Cheque: to Environmental Defender's Office WA, 544 Hay Street, Perth WA 6000
- Cash: by calling into Suite 4, Woods Building, 544 Hay Street, 6000

We are also running a fundraiser in September (see opposite), which we encourage you to attend. ■

12TH SEPTEMBER
7PM

Strictly Hypothetical
THE GREAT BEE CULL

A live hypothetical about bees, sharks and overreactions

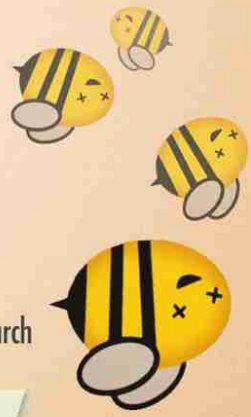
Every year 10 innocent Australians die from bee stings

But it was after the tragic death of a good looking and very popular 24 year old hiker that the Premier knew he had to protect the community from these predators.

So, he announced a series of "Parkland Bee Management Zones" with baited nets in popular urban parks. Inspired by Geoffrey Robertson, Strictly Hypothetical uses fictional scenarios to explore real world issues. Join our live, unrehearsed panel with MC Elisa Williams.

Our Panelists:

- Dr Martin Drum: Lecturer in Politics at Notre Dame University
- Natalie Banks: Founder of No Shark Cull WA
- Catrina Aniere: CEO of Millennium Kids Inc
- Tiffane Bates: Apiary Manager at Centre for Integrative Bee Research



TICKETS: $30/$25 online, $35 at door or book a table of 6 for $140

www.trybooking.com/FLFW

Fundraiser for the EDO

Friday 12th September 2014, 7pm

Rosie O'Grady's, Northbridge

FOOD AND DRINKS AVAILABLE

For more info, contact Majella on 9221 3030

Environmental Defender's Office Western Australia

Strictly Hypothetical
www.strictlyhypothetical.com.au

Improving groundwater regulation in a drying southwest

Carolyn Dearing, Outreach Solicitor

An important new report, *Groundwater Regulation in a Drying South West*, has recently been published by Michael Bennett and Professor Alex Gardner of the University Western Australia. The UWA report is available for review and downloading at www.law.uwa.edu.au/__data/assets/pdf_file/0003/2568423/SW-Groundwater-Report.pdf. The report makes a significant contribution to the debate on the course of the State's future water resource legislation currently being developed by the Department of Water and international scholarship on "climate adaption law" relevant to water resource management.

Fundamental questions for the regulation of the State's precious groundwater resources are addressed in the report, which also includes important recommendations for improvements to the regulatory framework, including:

- a broadening of regulatory coverage, including changes to the regulation of domestic garden bores and commercial plantations' consumptive use in view of the significant adverse impact these activities have on the long-term sustainability of groundwater resources;
- significant improvements in the content and enforceability of management plans, particularly the introduction of a duty to consider and address climate change in making statutory allocation plans;
- greater flexibility in relation to water access entitlements and improved water accounting, risk assignment and compensation regimes, consistent with the National Water Initiative objectives; and
- greater use of water markets, including allocations of groundwater through market-based mechanisms, the use of revenue from water allocations for water resource management functions, and the facilitation of water trading through law reform.

The report provides an insightful and compelling case for a modern, nationally consistent regulatory regime which supports innovation and adaptive management which properly values this precious resource. We highly recommend that all Western Australians concerned about the future use and conservation of our scarce water resources read this report. ■

The future for the Southwest?
– www.flickr.com/photos/flissphil/5122906298

EDOWA rejects comments by Tasmanian politician

Jessica Smith, Outreach Solicitor, and Patrick Pearlman, Principal Solicitor

EDOWA strongly rejects recent statements made by Mr Andrew Nikolic, federal Member for Bass in Tasmania, about Environmental Defender's Offices' activities (including EDOWA). These statements have been widely publicised, including in an ABC news article on 30 June 2014. ("Liberal MP moves to strip charity status from some environmental groups", ABC News, 30 June 2014, available at www.abc.net.au/news/2014-06-29/andrew-nickolic-moves-to-strip-charity-status-from-some-environ/5557936?WT.ac=statenews_tas). Mr Nickolic's statements contained several unsubstantiated, defamatory statements about EDOs and thus also EDOWA.

We're obliged to inform EDOWA's many loyal members and supporters, and the public in general, that the statements are without foundation and that EDOWA is taking up the matter with Mr Nikolic. In accordance with its not-for-profit objects, EDOWA provides legal services to the community and has an impeccable record for doing so within the confines of the law. The organisation provides services through its lawyers who abide by their stringent professional and ethical obligations under the guidance of the Management Committee, which includes senior practising lawyers.

EDOWA sent a concerns notice to Mr Nikolic under the *Defamation Act 2005* (WA) on 10 July 2014, requesting that he immediately cease and desist from making such statements and issue a public retraction. We received Mr Nickolic's response on 15 July, categorically denying all assertions set forth in the concerns notice. EDOWA will be considering all of its legal options in relation to Mr Nickolic's statements. ■

State Planning Strategy 2050

Patrick Pearlman, Principal Solicitor

On 28 June 2014, the Western Australian Planning Commission (WAPC) released the *State Planning Strategy 2050* (2050 Strategy), which sets forth the principles and objectives to guide State and local planning policies and decisions for the next three decades. The 2050 Strategy "places a priority on economic and population as the key drivers of land use and land development", based on a "can do" attitude and integrated "systems" view of land planning and development. (2050 Strategy, Executive Summary – "Delivery Culture").

As with documents of this nature, the 2050 Strategy is long on objectives and goals, and short on specifics. While the environment, climate change and water constraints, among other things, are noted, the strategy does not contain much in the way of concrete proposals for managing impacts associated with population growth and development. Nonetheless, EDOWA and its members should be familiar with the strategy.

The 2050 Strategy is available for viewing at the WAPC website, www.planning.wa.gov.au ■

Groups oppose iron mining in Yilgarn

Patrick Pearlman, Principal Solicitor

Mining opponents *(L-R) Peter Robertson (TWS), Brian Moyle (Wildflower Society), Shapelle McNee (HAR Advocates), Patrick Pearlman (EDOWA). – EDOWA*

EDOWA has agreed to represent three groups opposed to proposed iron mining by Polaris Minerals Pty Ltd in the banded iron formations in the Helena and Aurora Range in the Yilgarn region of WA. The three groups – the Wilderness Society of WA (Inc), the Wildflower Society of WA (Inc), and the Helena and Aurora Range Advocates Inc – lodged objections in the Mining Warden's Court in May 2014 to two mineral tenement applications – General Purpose Lease G77/124 and Miscellaneous Licence L77/27 – by Polaris. The applications would provide for infrastructure needed to service Polaris' proposed J5 and Bungalbin East iron mines in these areas. Those proposed mines are currently undergoing assessment by the WA EPA, and a decision on the level of assessment by the agency is anticipated in the near future.

Banded iron formations in the Helena and Aurora ranges have long been recognised as unique, important and fragile ecosystems, home to many threatened and localised species of flora and fauna. For nearly 40 years the region has been the subject of attempts to put it into a conservation status that would protect it from any form of mineral development. Moreover, the two mineral tenement applications and the mines they would serve are located entirely within the Mt Manning Helena and Aurora Range Conservation Park (MMHARCP). Unfortunately, conservation park designation alone does not protect the areas from mineral development.

At a 1 August 2014 mention hearing, the Mining Warden agreed to adjourn the organisations' objections until 12 September, in order to allow the EPA to clarify the level of assessment applicable to Polaris' proposed mining and to allow the groups to identify any issues that should be addressed by the Warden outside of the environmental assessment process. ■

If you have ideas for EDOWA fundraising events please contact **Majella Metuamate** at mmetuamate@edowa.org.au or on 9221 3030

Japan signals plans to resume whaling in Southern Ocean

Jessica Smith, Outreach Solicitor

Japanese Prime Minister Shinzo Abe,has indicated that his country intends to resume whaling in the Southern Ocean, just months after the International Court of Justice (ICJ) ordered it to stop.

Mr Abe told a Parliamentary Committee on 9 June that he 'wanted to aim for the resumption of commercial whaling by conducting whaling research in order to obtain scientific data indispensable for the management of whale resources'.

The ICJ ruled in March that Japan's whaling program in the Southern Ocean was not conducted for scientific purposes and must cease. The ICJ case against Japan was brought by Australia, with backing from New Zealand.

Following Mr Abe's comments both Australia and New Zealand have reiterated their opposition to whaling. Australia's Environment Minister, Greg Hunt, said 'We believe all parties should respect the outcome of the ICJ case.'

However, Prime Minister Tony Abbott has largely avoided raising the issue with Japan. During Mr Abe's visit in July, Mr Abbott said the friendship between the two countries was bigger than their differences on whaling. 'Friends can disagree. That's in no way inconsistent,' he said. ■

A Japanese factory ship hauls aboard two Minke whales in the Southern Ocean. – Australian Customs & Border Protection Service

Annual General Meeting planned for October

Majella Metuamate, Office Coordinator

EDOWA's AGM is tentatively scheduled to be held in October. A specific date and venue will be announced shortly. This year there will be a number of important matters for members to consider, particularly with respect to funding and organisational direction. We hope to see many of our members and supporters there.

Environmental Defender's Office
Western Australia (Inc)

Core funding for EDOWA (Inc) is provided by the WA State Attorney General's department.

MEMBERSHIP APPLICATION* (Please return to EDOWA, Suite 4, 544 Hay St, Perth WA 6000)

Title ..... First name ..... Surname .....

Postal address ..... Postcode .....

Tel ..... Mob ..... Email .....@.....

PAYMENT

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➤ ☐ Please debit my credit card the amount of $..... (including $ .....donation)

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Date ☐☐☐☐☐☐ Signature .....

MEMBERSHIP FEES (please circle one)

$15 Unwaged or concession
$40 Waged, household, non-profit group
$110 Corporate

* Please note: memberships are subject to approval by the EDOWA Management Committee. Members must agree to abide by the EDOWA's Rules.

Office use only: *R#..... Date rec'd ..... Expiry date..... Email bulletin.....*