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FILE No	JETTY No	LOCATION	LICENSEE
LM0454	0454	3 (LOT 11) INLET CRESCENT, DENMARK	LEONARD EDWARD & BARBARA ANNE ANDERSON
LM0866	0866	(LOT 1010) PEACEFUL BAY ROAD, BOW BRIDGE VIA DENMARK	MARK ALFRED GEORGE/DIONNE VALERIE PHILLIPS/WILD
LM0866	0866	(LOT 1010) PEACEFUL BAY ROAD, BOW BRIDGE VIA DENMARK	PETER & LESLEY COX
LM1103	1103	8 (LOT 19) RIDLEY PLACE, DENMARK	ROBERT WINGATE & KAREN FRANCES KIRK
LM1735	1735	ADJ 33 (LOT 2) INLET DRIVE, DENMARK	CHRISTOPHER JOHN & ELIZABETH ANN WRIGHT
LM3163	1735	LOT 2 INLET DRIVE, DENMARK	PETER HERBERT & DEBORAH ANNE WILSON
LM3123	1735	LOT 2 INLET DRIVE, DENMARK	BRUCE GUERIN & KATHLEEN JUNE PRIES
LM0469	CARUSO BEACH	LOC 6714 MCINTOSH ROAD DENMARK	OWEN RODNEY & ROSEMARY PATRICIA & WARREN BRADY McINTOSH/MILLER
LM1071	D1071	7 MINSTERLY ROAD, DENMARK	THOMAS McCALLUM & FIONA THOMSON
LM0039	D13	LOT 13 INLET DRIVE, DENMARK	TREVOR ANTHONY MARCHANT
(CANCELLED)			
LM1936	D14	63 (LOT 14) INLET DRIVE, DENMARK	CYRIL WILLIAM RODEREDA
LM0094	D184A & B	LOT 184 SOUTH COAST HIGHWAY, DENMARK	DENMARK BOATING AND ANGLING CLUB INC
LM0116	D2035	75 (LOC 2035) INLET DRIVE, DENMARK	AUDREY LEILA DENTON OLIVER
LM1099	D91	UNIT 2, LOT 177 RAINBOW CLOSE, DENMARK	ANGUS GAVIN & LACEY MILDRED MARTIN & LANGWORTHY
LM2036	DENMARK1	1ST MOORING SOUTH OPP BERRIDGE PARK	JULIE-ANN & RODNEY WILMOTT
LM2518	INLET DRIVE BOAT RAMP	ADJACENT TO INLET DRIVE DENMARK	SHIRE OF DENMARK
LM2519	PODDYSHOT JETTY & RAMP	PODDYSHOT PLACE, DENMARK	SHIRE OF DENMARK
LM1434	PODDYSHOT WILSON	PODDYSHOT, DENMARK	DENMARK BOATING AND ANGLING CLUB INC
LM0454		3 INLET CRESCENT, DENMARK	STANLEY BRUCE HOBART
LM0462		HORSLEY ROAD, DENMARK	PALOS VERDES ESTATES PTY LTD
LM0459		PLANTAGENET LOCATION 5965	GREGORY IAN & WENDY MAY MARCHANT
LM0462		HORSLEY ROAD, DENMARK	RONALD POWLEY

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9
18



• Aviation

Aviation

DoT is the key coordinating and advisory body on state aviation related matters.



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- o Air services>
- o Aircraft noise>
- o Regional Airports Development Scheme>
- o Links>
- o Contact us>
- o Site map>

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- o Air services >
- o RADS >
- o State Aviation Strategy >

Contact Details

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All Contacts >

Home / Marine / Boating facilities / Jetty licences

Jetty licences

Find out how to apply for, renew, transfer or cancel a jetty licence in Western Australia.

About jetty licences

The *Jetties Act 1926 (WA)* defines a jetty as any structure connected to a body of waters that, wholly or in part, may be used for the purpose of launching or landing a vessel. This includes:

- Wharves
- Piers
- Grids
- Slips
- Landing places
- Stages
- Platforms
- Ramps
- Fixed or floating structures
- Erected or placed structures.

All jetties require a licence. This is to ensure that the jetty meets all safety and maintenance standards, and does not interfere with navigation.

Types of jetty licences

There are 3 types of jetty licences:

- Commercial jetty licence—issued to businesses or for commercial activities
- Private jetty licence—for domestic and recreational by the applicant and family only
- Public jetty licence—issued to a public body for use by the general public.

Public liability risk

A jetty licence does not restrict public access to areas that the public would have had access to before the licence was issued—for example, a foreshore reserve.

Licensees should be aware of the public liability risk of having a jetty and the indemnity provided under the licence. You may wish to obtain public liability and other relevant insurance for their jetty.

Applying for a licence

Jetty licences are issued in the name of the owner of the property at which the jetty will be constructed.

Note: For new jetties, construction must not start until the licence has been awarded.

To apply for a jetty licence please submit the following to our Fremantle office:

- Jetty Licence Application form (available below)
- Copy of the Certificate of Title for the adjacent property
- Site plan showing the jetty's dimensions and its location in relation to the applicant's property (A4-size)—must include all other structures, e.g. boat ramps
- Application fee (non-refundable).


If the proposed jetty structure does not conform to approved specifications, engineering drawings must be submitted along with the site plan.

If the licence will be in a company's name (as shown on the Certificate of Title), the following will need to be provided:

- Copy of the Certificate of Incorporation
- Names and addresses of 2 company directors (who will be guarantors)
- Australian Business Number (ABN).

For more information, please contact us.

Please download the relevant application form below.

 Licence a commercial jetty

141 Kb

 Licence a private jetty	140 Kb
 Licence a public jetty	138 Kb
 Licence a fuel pipeline	140 Kb
 Licence a mooring/aquaculture area	136 Kb

Issue of jetty licences

Once an application is submitted, the Department of Transport will consult with other relevant authorities before issuing a licence, depending on the location of the jetty and the local policies that may apply. These include:

- Department of Environment Regulation
- Swan River Trust
- Local government.

Note: After receiving a jetty licence, you may still need to obtain any other relevant development or building approvals from these authorities.

Licence dates

The commencement date for a new jetty licence will be either:

- Date construction commences
- Date the licence is issued
- Proposed future date for commencement of construction.

The renewal date for a new jetty licence will normally be a continuation of the previous licence's annual renewal date.

Display of licence numbers

Each jetty licence will have a unique licence number.

The licence numbered must be:

- Displayed above the winter high-water level
- Visible from both the shore and on the water
- in a contrasting colour to the structure
- At least 75 mm high.

Modifying an existing licence

If you intend to conduct any works on your jetty, a permit to modify the jetty is required.

You will need to provide the following:

- Modification form (available below)
- Design drawings signed by a licensed engineer
- Site plan showing the jetty's dimensions and its location in relation to the applicant's property (A4-size)—must include all other structures, e.g. boat ramps
- Confirmation that the jetty number is properly displayed on the structure
- Copies of all relevant approvals
- Application fee (non-refundable).

Please download the relevant jetty licence modification form below.

 Modify a commercial jetty	138 Kb
 Modify a private jetty	137 Kb
 Modify a public jetty	137 Kb
 Modify a pipeline	139 Kb

Transfer of a jetty licence

Applications to transfer a jetty licence from one owner to another follows the same process as new application. However, the current licensee must provide the Department of Transport with a statement that they have no objections to the transfer.






The Department does not reimburse licence fees for transfers. Licensees may wish to adjust the property price to reflect any unusual or unpaid licence fees directly with the vendor or settlement agent.

The date listed on a transferred jetty licence will be the date of transfer of ownership of the relevant property, as shown in the Certificate of Title.

Please download the relevant transfer form below.

To transfer your jetty licence, please submit a Form A - Notice of Intention to Relinquish Jetty Licence (available below).

The Department of Transport does not reimburse any fees on the cancellation of a licence.

 Form A - Notice of intention to relinquish jetty licence	36 Kb
 Transfer a commercial jetty licence	141 Kb
 Transfer a private jetty licence	141 Kb
 Transfer a public jetty licence	139 Kb
 Transfer a fuel pipeline licence	141 Kb



Licence a Private Jetty

Section 7 Jetties Act 1926

1 Essex Street Fremantle WA 6160
PO Box 402 Fremantle WA 6959
Tel: 9435 7626
Fax: 9435 7808

Contact Details

Applicant/s name: (Please print)

Residential/company address: _____
(must be provided)

Postal address: _____

Phone no: home/business _____ mobile _____ facsimile _____
(must be provided)

email: _____

Structure Details

Location of structure: _____

Type of structure: _____

Dimensions of structure: _____

Maximum design vessel: (in metres) _____

Proposed use for structure: _____

Dated this _____ day of _____ 20

Applicant/s signature: _____

Contact person: (please print) _____

Please forward a copy of your certificate of title or lease with your application or as soon as possible. Failure to do so will delay the processing of your application.

Office Use

Receipt number: _____ Receipt date: _____

Important Information for the applicant

The private jetty licence application form is to be completed and returned to the Department of Transport (DoT), Coastal Facilities, 1 Essex Street, Fremantle or PO Box 402, Fremantle WA 6959, with the following:

Checklist of required items:

- The application fee; Current fees can be found on the Department of Transport website.
NOTE: only the application fee should be sent with the application form.
- Copy of certificate of title or lease for the property near the site of the structure. The licence will only be issued in the name as it appears on the certificate of title or lease;
- Dimensional sketch (A4 size) illustrating the overall structure dimensions and its location in relation to the applicant's property; and
- A copy of any other relevant approvals.

The applicant must consult with other relevant authorities such as local government, the Department of Environment and Conservation, WA Planning Commission, Swan River Trust etc. DoT will only issue a licence with the agreement of the other authorities. Various policies apply as to what is an acceptable jetty in different locations and circumstances. For further details of these please contact the Maritime Licensing Officer on 9435 7626.

The receipt of a jetty licence from DoT does not alleviate the need for the applicant to obtain necessary development or building approval from other authorities with jurisdiction.

For licences to be issued in company names (as shown on the certificate of title or lease) the following must also be provided:

- A copy of the company's certificate of incorporation;
- The names and addresses of the company directors; and
- The company's ACN or ABN

Applicants should be aware of the public liability risk that accompanies having a jetty and the indemnity provided to the Chief Executive Officer in the DoT and the Crown under the licence. Licensees may wish to investigate obtaining public liability and other relevant insurance for their jetty.

When the subject property is sold, then the DoT should be notified. Please refer to the licence agreement, which states that "the licensee is not to assign or transfer the rights hereby conferred unless permission in writing is obtained from the licensor".

Application to transfer a jetty licence, received after the property sale, will be processed as normal however, should approval for transfer not be given for any reason, the repair or removal of the structure may remain the previous owner's responsibility (particularly if located on a public foreshore).

Therefore, before buying/selling a property with a jetty, you should check that:

- All licence fees in arrears have been paid; and
- The jetty structure is in a good and safe condition.

**Department of Water South Coast Region Position Paper
Jetties in *Waterways Conservation Act* management areas
July 2013**

Waterways Conservation Act

Under the *Waterways Conservation Act 1976*, the Minister for Water and the Department of Water have responsibility for the conservation of the waters and associated land in five declared Management Areas. The declared Management Areas are Albany Waterways, Avon River, Wilson Inlet, Peel Inlet and Leschenault Inlet.

The Department of Water has approvals processes for certain works affecting waterways and foreshore areas and can provide advice on other developments affecting, or likely to affect, the condition and public amenity of these waterways.

Key aspects of the Act relate to protecting and managing the condition and amenity of waterways when there are disturbance activities within or adjacent to the Management Areas. Activities within or adjacent to the Management Area that should be referred to the Department of Water for advice or licensing includes:

- changes or intensification of land use adjacent to or impacting on waterways or their foreshore areas (e.g. land planning, development, mining, mineral exploration, drainage or flood risk management proposals)
- dredging, reclamation, dewatering, drainage and construction activities including retaining walls, jetties, private boat ramps or public facilities
- other activities that may affect the declared management areas

Jetties

Jetties may be licenced by the Department of Transport under section 7 of the *Jetties Act 1926*. The definition of jetty also includes pier, wharf, quay, grid, slip, landing place, stage, platform or similar structure

As per section regulation 9 of the *Waterways Conservation Regulations 1981*, a licence for developments, or structures, or activities may be required from the Department of Water. The Department of Transport should refer to the Department of Water applications for jetty licences within Waterways Management Areas. Approval will also be required from the land manager (if public land).

Where a jetties licence has been issued and there has been consultation between the Department of Water and the Department of Transport as to the requirements of the relevant management programme, (and the relevant land manager if the applicant is not the owner or occupier), no further licence is required under the *Waterways Conservation Act*.

Wilson Inlet

The Wilson Inlet Foreshore Reserves Management Plan 2008 is a comprehensive document prepared by the Shire of Denmark to guide the management of the foreshore reserves of Wilson Inlet. Management zones were identified: Conservation, Conservation-passive recreation; and recreation. The document should be used to guide the discretion to grant a jetty licence.

Jetties and other structures should only be considered in recreation management zones.

Frankland River

The lower reaches of the Frankland River (to Monastery Landing) are largely contained within the Walpole-Nornalup Marine Park. All foreshore areas are within public ownership (crown reserves) and there is a public launching area available at the recreation reserve with good public access. There are many existing private jetties in Nornalup, and given the land tenure, and the potential cumulative impacts on the waterways, it is not considered appropriate for more private jetties in this area.

The Frankland River is not within a *Waterways Conservation Act* management area, so the Department of Water does not have a regulatory role in this area. As the river is contained within the Walpole-Nornalup Marine Park, the Department of Parks and Wildlife should be consulted.

Department of Water General Principles on Jetties

- In general, private jetties should not be located on public land. Applications to construct private jetties on public reserves or road reserves will generally not be supported due to the presence of private jetties and boat sheds potentially alienating public use and enjoyment of the waterways and foreshore, as well as, at times, reducing their aesthetic qualities. Shared public facilities will be favoured, at strategic locations which are best suited to navigational requirements, public access and environmental protection.
- Each jetty licence application should be assessed on an individual basis, taking into account: purpose of use, land tenure, access, riparian vegetation, seagrass and any other relevant matters.
- The existing rights of owners of licenced jetties should be recognised, and continued use accepted, if this use complies with the requirements of the *Jetties Act* and the *Waterways Conservation Act*.
- Unlicensed jetties should not be encouraged, as this leads to uncontrolled and unmanaged provision of facilities. Where necessary, action will be taken under the Act to dismantle unlicensed jetties and to recover the costs of doing so.
- A request for the transfer of a private jetty licence will be permitted if the Department of Transport confirms that the facility is in good working order and satisfies its licence conditions and is consistent with the objectives of the *Waterways Conservation Act*.
- The construction of private jetties on private property will need to satisfy all statutory requirements and not reduce the ecological or public amenity value of the waterway or foreshore.
- The construction of public jetties by commercial operators or by state or local government authorities will need to satisfy all statutory requirements and not reduce the ecological or public amenity value of the waterways environment.
- Under special circumstances approval may be recommended for a temporary jetty required for a special event, conditional on it being removed after the event.
- The relocation of licensed boatsheds may be recommended for approval if it satisfies statutory requirements and does not adversely affect public amenity or environmental quality.



POLICY SRT/D21 JETTY STRUCTURES

BACKGROUND

Jetties, wharves, boat ramps and boatsheds have been part of the Swan and Canning River landscape since the time of early European settlement. These structures provide access to the waterway for the public, water based sporting clubs and for businesses operating commercial ventures on the river system. Many have been constructed and/or removed over time.

As the population of Perth expands, the river faces pressures from increased usage and development, including requests for jetty structures, which may result in the alienation of portions of the public waterway, safety hazards and environmental impacts.

Approval requirements for jetty structures

There are approval requirements for all new jetties under various pieces of legislation that cover planning approvals as well as licence and lease requirements, depending on location and circumstances.

- 1) Planning (development) approvals are required under:
 - a) Part 5 of the *Swan and Canning Rivers Management Act 2006*, where a jetty structure is entirely within the Swan River Trust Development Control Area; or
 - b) Clause 30A(2)a of the *Metropolitan Region Scheme*, where the jetty structure is partially within, or abutting the waters of the Trust Development Control Area.
- 2) A jetty licence is required, where the structure is, as defined under section 3 of the *Jetties Act 1926*, a wharf, pier, grid, slip, landing place, stage, platform, or similar structure, whether fixed or floating, erected or placed, wholly or in part, in, on or over any waters and any ramp which is or may be used for the purpose of launching or landing a vessel.
- 3) Where exclusive use of the jetty or riverbed is proposed, a lease over the riverbed is required. Riverbed leases are issued by the Trust under section 29 of the *Swan and Canning Rivers Management Act 2006*.

A jetty licence as required under the *Jetties Act 1926* is issued by the Chief Executive Officer of the Department of Transport (DoT). Prior to issuing a jetty licence DoT will ensure that the location of the jetty does not interfere with navigation and that the design, construction and maintenance of the jetty is such that it is safe to use. A jetty licence may be issued on the terms and conditions as set by DoT to any person, company or agency for the erection or construction of a jetty or for the maintenance and use of any jetty.

Licensees should be aware that the issue of a jetty licence does not grant exclusive use to the licensee as the licence does not provide any tenure over the structure, riverbed or the waters above. A jetty licence does not prevent the public having access to the structure and therefore, the licensee is requested to insure the structure against all public liability.

A jetty licence requires that the licensee will maintain and keep the jetty in good working order and in a safe condition. If a jetty or associated structure falls into disrepair, it may

constitute a danger to the public or detract from the amenity of the river. In such cases the DoT will require the licensee to repair or remove the structure.

Any new jetty licences issued are likely to be subject to an explicit condition clarifying that the permanent mooring of vessels, whether owned by the licensee or any other person, is not permitted and that only brief tying up to pick up or set down goods or passengers is permitted for any vessel. Jetties that are not available for public use can inhibit general public access to the river and its associated foreshore reserves. A riverbed lease is required where exclusive use of a jetty structure is proposed for commercial purposes.

The DoT will issue a jetty licence only after planning approval has been granted. This policy deals with the Trust's recommendations for planning applications received under the *Swan and Canning Rivers Management Act 2006* or the Metropolitan Region Scheme.

Community and commercial jetty structures

Appropriately designed and located community and commercial jetties form an integral part of the river environment and are an important community resource.

Community and commercial jetties provide the general public with a different form of experience and access to the Swan and Canning Rivers. Jetties are also necessary to provide embarkation points for the various ferry services and commercial cruises operating on the rivers and as such are an important recreational tourist resource. The Trust will generally require provision of public access to jetties, although such access may be restricted in certain circumstances depending on planning approvals and lease conditions.

There are a number of community and commercial jetties around the Swan and Canning river system. These range in both size and purpose, from the larger commercial jetties at Barrack Square, to smaller jetties and wharves in the upper reaches of the Swan and Canning Rivers. Community jetties are generally built and maintained by local governments or state government agencies such as the DoT. Commercial jetties are built and maintained by private bodies.

Community and commercial jetties intended for the mooring or landing of commercial vessels and as a picking up and setting down point for passengers, are only considered appropriate where there is sufficient depth of water at low water mark for safe navigation. Jetties are not appropriate for shallow waters or mud flats where their development would require dredging and on-going maintenance dredging to allow access by vessels.

When determining or making recommendations on applications for community and commercial jetties there are a number of issues that the Trust will consider:

- how the proposed jetty structure fits with overall planning for the river as part of a regional plan or precinct plan;
- potential benefits the jetty will have in relation to public access and enjoyment of the river;
- potential to obstruct navigation channels and alienate the waterway from the public;
- impact on other beneficial uses of the river;
- impact on the local landscape including views to and from the river, the scale, design and materials used for construction;
- potential for increasing erosion of the river banks;
- impact on the natural vegetation at the site;
- impact on local flooding;
- long term maintenance of the structure;
- compliance with minimum design standards to ensure the safety of the structure;

- impact of signage and lighting proposed for the jetty;
- hours of operation and any external impacts on the amenity of the location;
- size of vessels to use the jetty;
- the location in relation to other facilities such as car parking, toilets and other jetties in the area;
- public liability and safety; and
- number of existing or approved jetties within a locality.

Proposals for new jetties will also need to be in accordance with a strategic plan which sets out the location of community and commercial jetty structures and their proposed functions (i.e. fishing, ferry access etc). While the Trust recognises the importance of commercial and community jetties in providing access to the waterway, it considers that a proliferation of such structures on the river may detract from the amenity of the river system as a whole.

Private jetty structures associated with residential property ownership

In the past, structures have been built in, over or near water by private individuals. These structures include small jetties, boat houses, boat sheds, launching ramps, slipways and wharves and have generally been designed with the intention of providing a means for the licensee to board or embark from a vessel. This has required the proponent to obtain a development approval pursuant to the *Swan and Canning Rivers Management Act 2006* (where the works are entirely within the Trust Development Control Area) or from the Western Australian Planning Commission and Local Government (where structures are wholly or partly on land reserved under the *Metropolitan Region Scheme*), as well as a jetty licence (from DoT).

On public foreshores and river waters, the Trust favours activities and development which benefit public access and use in preference to private use of public land and waters within its management area. For this reason the Trust is opposed to the construction of structures for private use, such as jetties, boat houses, boat sheds, launching ramps, slipways and wharves on or abutting Crown land.

Where a property has a high water mark land title the Trust will not support applications for the construction or use of private jetties, boat houses, boat sheds, launching ramps, slipways and wharves on or abutting this land. Such structures can affect the amenity of the river environment, inhibit and make public access unsafe, and cause a perception that a particular river foreshore below high water mark is not public land.

The Trust notes that there are existing jetty structures on the rivers owned by individuals with current development approvals and valid jetty licences. The Trust has in the past been requested to consider the removal of a facility from one location and its reinstallation at another location. *The Swan and Canning Rivers Management Act 2006* is clear in its definition of development and that such work would constitute a new development. The Trust will not support relocation of such structures. Existing private structures on the river can continue to be used by the owners and the general public in accordance with applicable development approvals and jetty licence conditions.

OBJECTIVES

The objectives of the policy are to:

- prevent the alienation of waters and the river foreshore from public use and enjoyment;
- ensure that jetty structures complement the landscape, its setting and dominant character;

- ensure community and commercial jetties are located and constructed with minimal impact on the natural environment and do not detract from the visual amenity of the river; and
- maintain clear views and prevent the obstruction of the navigation channels and the river foreshore.

POLICY

SRT/D21.1 Applications to construct new community and commercial jetties

Due to concern about environmental and navigation impacts, the Trust will carefully scrutinise applications for the installation of new community and commercial jetties. Where the applicant can demonstrate a need for such a structure, particularly in a strategic plan or precinct policy, the Trust may support the development.

Applications to build new commercial jetties will only be considered:

- a) if the proposed site abuts the applicant's property and the applicant's property has a waterside boundary; or
- b) the applicant has been granted written permission from a public authority that owns the land or has the land vested in it. Evidence (vesting agreement) of land ownership with waterside boundary will be a requirement for lodgement of the application.

The Trust will not support a commercial jetty designed entirely for exclusive private use and the Trust may recommend approval for a limited time.

SRT/D21.2 Private jetty structures associated with residential property ownership

The proliferation of new private jetty structures associated with residential properties has the potential to cause detrimental impacts on the river environment. These impacts include:

- significant visual amenity impacts;
- the potential to cause navigational hazards, particularly where the river narrows upstream of the Causeway and Canning Bridge; or
- the privatisation of parts of the river and/or river foreshore.

The Trust will not support the construction of new private jetty structures or their extension within the Swan River Trust Development Control Area.

SRT/D21.3 Other permits

Once approved by the Trust, any new community or commercial jetty structure must have a jetty licence from the Department of Transport (DoT).

A riverbed lease from the Trust will be required where exclusive use of the jetty is being proposed.

SRT/D21.4 Visual impact of jetties and associated infrastructure

Jetties should be designed to minimise visual impact on the river landscape and be constructed of materials that complement the natural environment and existing landscape.

Lighting on jetty structures needs to be designed to illuminate the structure without interfering with marine navigation.

Signage should be kept to a minimum and should not be visually obtrusive. Signage on the jetty structure should be designed to address use and safety issues only. Advertising signage will not be supported unless it is associated with an approved commercial use of the jetty.

Some local governments may require a licence for jetty signage. For more details, please refer to the Swan River Trust policy *Signage* (SRT/D18).

The cumulative effect on the local riverine landscape of new or extended jetties and vessel mooring infrastructure will be an important consideration in the Trust's assessment of any application for new community or commercial jetties.

SRT/D21.5 Engineering and other design standards

The design of any new community or commercial jetty needs to comply with the minimum design standards required by the DoT, and is to be certified by a qualified and practising engineer.

The design of any new proposed jetty should also ensure that the structure does not interfere with navigation or existing recreational use of the adjacent waters. The Trust will only support jetties that are sized and designed for minimum operating requirements/proposed use.

The size of proposed structures will be assessed by the Trust dependent on location, existing infrastructure, proposed public usage and size of vessels intended to use the jetty. Generally the length of jetties should not extend beyond the 1.5 metre Low Water Mark Contour.

In all jetty structures the head or end of the proposed jetty shall have at least 20 metres horizontal clearance from the navigation channel.

Best endeavours should be made in the design of the jetty and associated land based amenities to facilitate universal access, pursuant to the *Disability Discrimination Act 1992*.

Where a community or commercial jetty is proposed, car parking should be provided to the requirements of the local Town Planning Scheme or the Australian Standards for Marinas where the Scheme does not specify a standard.

At certain locations, such as Barrack Square, the design of the jetty and any associated structures should take into consideration the heritage values of the area. Applicants are also advised to seek advice from the Department of Indigenous Affairs in relation to their obligations under the *Aboriginal Heritage Act 1972*.

SRT/D21.6 Temporary jetties and associated structures

The Trust may support temporary structures for special events held in/on or over waters in the Trust's Development Control Area.

SRT/D21.7 Applications to extend and make alterations to existing community and commercial jetties

Any proposals to extend or make structural changes to community and commercial jetties must receive planning and licence approval. This is to ensure that design standards are maintained, marine navigation will not be obstructed and other planning considerations are addressed. In situations where jetty extensions require the alteration or extension of a lease over the riverbed the Trust will also consider the impact of such alterations on the environmental values, landscape impacts and community use and enjoyment of the river.

Design and visual impact standards for alterations to existing jetties and associated structures are to be consistent with the Swan River Trust policy *Conservation, Land Use and Landscape Preservation* (SRT/E1). A building licence from the appropriate local government authority may be a requirement for extensions and additions to and on community/commercial jetties where the jetty is located within a local government area.

It should be noted that applications for buildings such as kiosks and restaurants on community/commercial jetties will be assessed in accordance with Swan River Trust policy *Restaurants, Cafés, Kiosks and Tearooms* (SRT/D10).

SRT/D21.8 Transfer of existing private, community and commercial jetty licences

The DoT must approve transfers of existing jetty licences and the Trust will be consulted where the jetty is situated in a river reserve lease area. In considering a proposed transfer the Trust will need to be satisfied that the structure is of sound construction and in good order consistent with the jetty licence requirements. The prospective licensee is to acknowledge and comply with all pre-existing conditions of the original approval.

The Trust will also seek evidence that the prospective licensee:

- a) owns or is a lease holder of a property with a waterside boundary adjoining the structure (the prospective owner should produce their certificate of title deed as evidence); or
- b) has been granted written permission or a lease from a public authority that owns the land or has land vested in it, adjoining the structure.

SRT/D21.9 Effect of acquisition of the foreshore adjacent to existing jetties

Where land adjacent to the river is acquired by the State for foreshore reserve purposes, a jetty may become alienated from the private property. In this instance, the renewal of a jetty licence for private or commercial use unless a public authority is willing to accept the transfer of the licence to it as a community jetty.

Where continued use is considered inappropriate the jetty structure should be removed and rehabilitation of the area be undertaken at the cost of the current owner/lessee.

SRT/D21.10 Public liability

As jetty structures are publicly accessible, jetty owners should secure/obtain insurance in respect of all sums for which they become legally liable to pay compensation including:

- bodily injury, including death and illness; and
- damage to property, including loss of property, occurring as a result of an accident or happening in connection with use of the jetty structure.

SRT/D21.11 Floating boat lifts

Where a floating boat lift is proposed to be attached to a jetty structure, it is considered to be development and is therefore subject to planning approval and may also be subject to licensing by the Department of Transport.

The Trust does not support the installation of floating boat lifts on swing moorings within the Trust Development Control Area due to their significant visual impact and the potential to cause navigational hazards.

The Trust may support the installation of floating boat lifts within the water bed lease areas of yacht clubs and marinas, or on public or private jetties where visual impact, community use of the river, navigational hazards and environmental impacts are demonstrated to be negligible.

In assessing an application for planning approval, the Trust will take into account the following factors:

- impact of the floating boat lift structure and elevation of the vessel out of the water on the amenity and landscape values of the location when viewed from the river or from public places on the river foreshore;
- community use and enjoyment of the river, including the degree to which the floating boat lift will alienate a portion of the public waterway and obstruct public access to the jetty structure;
- effect on navigation of the waterway; and

- environmental impacts and benefits.

If the Trust is not satisfied that these impacts are acceptable it is unlikely that such an application will be supported.

The Trust acknowledges that the use of floating boat lifts reduces the need to apply harmful anti-fouling coatings to boat hulls. However, this does not override other planning assessment considerations.

The Trust expects all boat owners to use approved anti-fouling coatings in accordance with manufacturers' instructions, and to ensure that any hull cleaning debris is prevented from entering the river.

SRT/D21.12 Advice from other agencies

As part of its consideration of any application, the Trust may seek advice from any agency or organisation, which it considers has a legitimate interest in the application. The following agencies may be consulted:

- Department of Indigenous Affairs
- Department of Transport
- Relevant local governments
- Heritage Council of Western Australia

RELATED POLICIES AND GUIDELINES

- SRT/E1 – *Conservation, Land Use and Landscape Preservation*
- SRT/E3 – *Flood Prone Land*
- SRT/D1 – *Dredging*
- SRT/D10 – *Restaurants, Cafés, Kiosks and Tearooms*
- SRT/D24 – *Slipping Facilities*
- Australian Standard AS3962-2001 *Guidelines for Design of Marinas*

TERMINOLOGY

Commercial jetty: the same definition as for jetty (below) but generally limited to usage by commercial vessels such as tourist vessels and passenger ferries as a picking up and setting down point for embarking and disembarking passengers. Also includes marinas, yacht clubs, restaurants and mooring facilities.

Community jetty: the same general definition as for jetty (below) but is owned by a public authority for usage by the public for recreational water based pursuits including fishing, swimming and temporary short-term mooring of public vessels. With approval, may also be used by commercial operators as a picking up and setting down point for embarking and disembarking passengers.

Floating boat lift: a device that floats on water and is used to berth a vessel out of the water when the vessel is not in use.

High water mark: the level reached by the river at the maximum recorded value or highest point of evidence (1.9 metres recorded at Barrack Street in 1945).

Jetty: a wharf, pier, grid, slip, landing place, stage, platform, or similar structure, whether fixed or floating, erected or placed, wholly or in part, in, on or over any waters and any ramp, which is or may be used for the purpose of launching or landing a vessel (as defined under section 3 of the *Jetties Act 1926*).

Low water mark: the level reached by the river at the minimum recorded value or lowest point of evidence (0.1.m recorded at Barrack Street in 1969/73).

Private jetty: the same general definition as for jetty (above) but also including boat houses, boat sheds, launching ramps, slipways and wharves, which are funded by a private individual or a company and are not for commercial use.

ADOPTION AND REVIEW DATES

Final Adoption Date	Review Date
14 June 2010	14 June 2015

Peel Inlet Advisory Council – Position Statement

BOATING FACILITIES, JETTIES AND STRUCTURES - WS 3.4

1. Introduction and Objectives

- Purpose** The purpose of this position statement is to ensure that the potential impacts associated with the location and construction of structures such as such as jetties, boat ramps, boat sheds, land backed berths and slipping facilities within the management area (*as defined – Waterways Conservation Act 1976*) are minimised.
- Objective** This statement aims to ensure that waterways environmental, aesthetic and social impacts associated with boating structures potential impacts are minimised, that the number of structures is controlled and that the alienation of public waterways and foreshore areas is minimised.

2. General PIAC Policy Considerations

- Cumulative Impacts** The cumulative impacts of such structures on or adjacent to waterways, including public access and possible alienation of the foreshore from public use, erosion, loss of foreshore vegetation, obstructions to floodways or river flows, vessel navigation and visual obstruction will be considered when assessing such proposals.
- Beneficial Use of Waterways** The Council’s aim is to ensure that the proliferation of any such structures in concentrated areas to the detriment of other values and or uses is minimised. Individual applications will be assessed on their merits, however local and regional planning for the overall benefit of the waterways will also be considered.

Design Considerations

The overall dimensions and scale of any structure being considered by the Department will depend on the purpose for which it will be built, the extent of intrusion into navigable waters, vessel design as well as environmental and aesthetic considerations. The Department will provide advice based on vessel design criteria described in the Department for Planning and Infrastructure's Strategic Plan for Maritime Facilities (1994) as a guide to the acceptable dimensions of proposed structures.

3. Referral and Assessment Process

Referral Process

Any new proposed structure referred to in this policy must initially be submitted to the licensing authority, being the Department for Planning and Infrastructure Maritime Division (DPI). Proposals will be referred by DPI to appropriate authorities for comment. DPI will then consider advice provided and determine its decision on the application.

The Peel Harvey Estuary, rivers and foreshores are within the Peel Region Scheme. Jetty development applications must also be submitted to DPI Mandurah for planning approval.

DoW and PIAC Roles

All applications, which generally conform, to Policy requirements will be processed by the Department of Water officer's (DoW) and a response sent to DPI. Applications which may be considered to present issues for waterways management or conflict with PIAC position statement will be assessed and referred to the Council for comment, and a response be made on behalf of the PIMC.

Policy Statement

Copies of this and other related PIAC position statements are available from the DoW's district office in Mandurah, or by contacting (08) 9550 4222 or fax (08) 9581 4269.

*Unit 6 / 21 Sholl Street
PO Box 332
MANDURAH WA 6210*

4.0 Policy Statements

4.1 Private Structures and Jetties (Riverine)

Proposals Adjacent to Public Land

PIAC will not recommend approval of applications for new private jetties, boat ramps, slipways or structures abutting or fronting public land. PIAC will not recommend approval for applications to rebuild unlicensed old jetties adjacent to public land that may have fallen into disrepair.

Properties with High Water Mark Titles	Application for or transfer of ownership of a private jetty licence, boat ramp, slipway or structure abutting properties with high water mark titles will be recommended for approval, providing the proposal will not adversely impact on the foreshore, its vegetation, impact on the floodway or the general riparian environment.
Transfer of Jetties abutting Public Land	<p>Applications for licence transfers will not be recommended for approval, unless the applicant owns the property adjacent to that structure.</p> <p>Applications for transfer of a licence will be recommended for approval where the licensee is also transferring (to the applicant) ownership of the adjacent lot.</p>
Structures Abutting Public Land	Applications for the transfer of licences for boat ramps, slipways or structures will not be recommended for approval and, as ownership lapses, the DoW will require site rehabilitation.
Relocating Existing Private Jetties	Relocation of an existing private jetty fronting a public reserve may be recommended for approval providing it can be shown that environmental benefits can be realised or accrued. If approved, the maximum relocation distance cannot be greater than 200 metres, and will only be considered if the relocation is upstream or downstream on the same side of the waterway as the existing private jetty.
Limits of Jetty Construction on the Murray and Serpentine Rivers	Applications for the construction of private jetties upstream of the Pinjarra Weir on the Murray River or Bedingfeld Road on the Serpentine River will not be recommended for approval by the Council.
Jetties Created by Subdivision	Applications for jetties on properties with high water mark boundaries created by subdivision after the date of this policy will not be recommended for approval.
Non – conforming Areas	<p>Reserve 40109 (Rodoreda Crescent) – The DoW is likely to recommend approval for jetty licenses (excluding boat ramps and slipways), based on the terms and conditions of the Reserve 40109 Foreshore Management Plan</p> <p>Murray River Delta Islands – As access to lots on these islands is via the river and foreshore reserves, DoW will consider recommending approval of applications for jetty licenses (excluding boat ramps and slipways) in these locations. Preference will be given to applications for shared jetties, with the preferred design being for ‘land-backed’ types due to the narrow river channels.</p> <p>Willow Gardens Lot 1-17 Reserve 38842 Mooring Area– In accordance with November 1996 (DPI) Boating Facilities Study for the Peel Region section 6.8.10 Moorings & Figure 6.2 Murray River Mooring Areas, PIAC will recommend Boatpens for Willow Gardens</p>

Lots 1 – 17 South Yunderup. Eight (8) boatpens to be located up and downstream of point with upstream end of Reserve 38842 allocated for Commercial and Public Structures. Boatpen location and design specifications to be resolved with Shire of Murray and DPI Marine.

4.2 Private Structures and Jetties (Estuarine – Peel Inlet and Harvey Estuary)

Properties with High Water Mark Titles	Applications for private jetty licenses will not be recommended for approval due to the shallow nature of the estuary shores and environmental sensitivity of these areas and the foreshores.
Properties Abutting Public Land	Applications for new private jetties, boat ramps and slipways abutting public foreshores or road reserves serving a similar purpose will not be recommended for approval.
Transfer of Private Jetty Licenses – Public Land	The Council will not recommend approval for transfer of private jetty licenses on public land unless the applicant owns property adjacent to the structure. Applications for transfer will be recommended where the licensee is also transferring ownership of the adjacent lot.
Boat ramps and Slipways Abutting Public Land	Applications to transfer licenses adjacent to public reserves will not be recommended for approval, and as the ownership lapses, the DoW will require site rehabilitation.

4.2 Jetty Construction Requirements

General Considerations	Proposed jetty dimensions are to be determined in accordance with their proposed use, vessel design, and extent of intrusion into the waterway, environmental and aesthetic considerations.
Setbacks to Adjacent Properties	<p>Development associated with the proposed jetty should achieve a minimum setback of 4.5 metres to all side boundaries of adjacent properties unless they are shared structures.</p> <p>The DoW may require the construction of a retaining wall and or rehabilitation adjacent to the jetty in order to protect foreshore banks.</p>
Dimension Guidelines	<p>Proposed jetties on the Serpentine and Murray Rivers, and the Mandurah Entrance Channel should be no greater than 6 metres in length from the shore to the outside end of the jetty.</p> <p>In general, depending on consideration of Section 2 of this policy, jetties should be contained within a 6m x 6m envelope.</p>
Jetty Design and Construction Specifications	All jetties should be constructed to DPI standard specifications. Jetty width should not exceed 1.5 metres, and the width at the head should not exceed 6 metres. Land-backed wharves should not exceed 6 metres in length and 1.5 metres in width. If jetty specifications are not in accordance with DPI standard specifications, engineering design

plans are to be certified by a structural engineer and submitted to DPI for approval.

Mooring Envelopes

Mooring poles will be allowed to compensate for the limit of a jetty width at the head. A maximum of 2 mooring poles may be approved in association with any one jetty. The position of the pole(s) will depend on the dimensions of the vessel to be berthed, vessel design, extent of intrusion into navigable waters, as well as environmental and aesthetic considerations. Mooring pole design specifications and embedment are to be to the satisfaction of the DPI.

Non – Conforming Applications

Applicants to provide written justification for variance to this Policy. In its assessment of applications that do not conform to these guidelines, the PIAC & DoW will have due consideration of the impacts outlined in Section 2 of this Policy. Where vessel navigation is a key concern the determination of such matter shall lie with DPI Maritime.

4.3 Other Structures and Related Boating Facilities

Canal Developments

PIAC will generally not provide comments on jetty or structure applications within artificial waterways and canal developments, unless specifically requested.

Structure Dimensions

Dimensions for all structures will be determined on a case by case basis. The criteria used will include those considerations listed in this policy statement.

Public Jetties and Boat Ramps

PIAC & DoW supports the provision of public facilities in accordance with the November 1996 (DPI) Boating Facilities Study for the Peel Region and Recreation Boating Facilities Scheme.

PIAC will support the provisions of a public facility where strategic planning has identified the need, and the proponent has sufficiently considered the potential environmental impacts of the proposal.

Boat Sheds	PIAC will not recommend approval for applications for new boat sheds. The transfer of a license may be recommended for approval if the applicant owns the adjoining property, or has high water mark property title.
Boatlift	PIAC will not recommend approval for the installation of boatlifts.
Wet Boat Pens on Private Land	Applications to construct wet boat pens on a private property fronting a public water body will not be recommended for approval.
Mooring Buoys	The Council considers that no mooring buoys should be permitted outside of gazetted or existing mooring areas in the Peel Harvey and its river systems.
Davits	PIAC will only support the provision of jetty davits to allow vessel access for disabled persons use. Davit design is to conform to Australian Standards.

Peel Region Scheme

Draft Boating Facilities Policy



November 2011

3 December 2013 - Attachment f



Call for Public Submissions

Peel Region Scheme Draft Boating Facilities Policy

The Western Australian Planning Commission has released the draft Peel Region Scheme: Boating Facilities Policy for public comment.

The draft policy is intended to guide the construction of private jetties and associated structures in the Peel region's natural waterways and its regionally significant artificial waterways.

The purpose of the draft policy is to minimise the impact of the location and construction of private jetties and related development on the natural and regionally significant waterways of the Peel region.

Display Locations

The draft policy will be available for public inspection from 11 November 2011 to 20 January 2012 at the following locations:

- the Department of Planning's Peel region office (Unit 2B 11-13 Pinjarra Road, Mandurah);
- the City of Mandurah municipal offices (3 Peel Street, Mandurah);
- the Shire of Murray municipal offices (cnr Pinjarra Road and Murray Street, Pinjarra);
- the Shire of Waroona municipal offices (52 Hesse Street, Waroona); and
- the Department of Transport's Fremantle office (1 Essex Street, Fremantle W.A. 6160).

The draft policy will also be available from the Planning WA website: www.planning.wa.gov.au

Submissions

Any person who wishes to make a submission either supporting, objecting or providing comment on any aspect of the draft policy is invited to do so by writing to the:

Secretary
Western Australian Planning Commission
Unit 2B, 11 - 13 Pinjarra Road
Mandurah WA 6210

The closing date for submissions is 5:00pm Friday 20 January 2012. Late submissions will not be considered.

Neil Thomson
A/Secretary
Western Australian Planning Commission

Contents

1.0	INTRODUCTION	3
2.0	BACKGROUND	3
3.0	POLICY APPLICATION	3
4.0	AIM AND OBJECTIVES	3
5.0	POLICY STATEMENT	4
5.1	General Policy Position	4
5.2	Existing Structures	5
5.3	New Private Structures	5
5.4	Permitted Jetty Areas	5
5.5	Public Boating Facilities	6
5.6	Design Requirements	6
5.7	Construction Requirements	7
6.0	APPLICATION PROCESS	7
7.0	IMPLEMENTATION	8
	APPENDIX 1	9
	APPENDIX 2	10

1.0 Introduction

Jetties and related structures have been part of the Peel region's waterways since the time of early European settlement. It is also known that structures such as fish traps and walkways were used by local indigenous people in the Peel waterways around the time of early European settlement.

In recent years, the population of the Peel region has grown significantly and it is expected to continue growing in the future. As the Peel region grows, its natural waterways (as opposed to artificial waterways) and foreshore areas will become increasingly valuable public resources. Accordingly, there is a need to ensure the natural values and public use of these waterways are not compromised by further private jetties and related development.

2.0 Background

In 1977 the Peel Inlet and Harvey Estuary Management Area was declared under the *Waterways Conservation Act 1976*. The control and management of this area was placed with the (then) Peel Inlet Management Authority (PIMA). In 1979, PIMA adopted a policy titled *Boating Facilities, Jetties and Structures WS 3.4*.

In 2002, PIMA was disbanded and environmental management of the Peel Inlet and Harvey Estuary Management Area became the responsibility of the (then) Waterways Commission. The Waterways Commission established a non-statutory community based group called the Peel Inlet Management Council, which provided advice about management of the waterways.

In 2008, the Peel Inlet Management Council became the Peel Inlet Advisory Council (PIAC), which adopted PIMA policy *Boating Facilities, Jetties and Structures WS 3.4* as its position statement.

In 2003 the Peel Region Scheme (PRS) came into effect and it became necessary for development within the Waterways reservation to be approved by the Western Australian Planning Commission (WAPC). Since 2003, the WAPC has consistently applied PIMA policy, now PIAC position statement, *Boating Facilities, Jetties and Structures WS 3.4*, when considering applications to construct jetties and related development.

This WAPC policy replaces *Boating Facilities, Jetties and Structures WS 3.4* as the primary tool guiding the determination of applications to construct jetties and related development within the Peel region's natural waterways.

3.0 Policy Application

This policy applies to jetties and related development in natural waterways or regionally significant artificial waterways (e.g. the Dawesville Channel and Mandurah Estuary) within the Waterways reservation under the Peel Region Scheme (see Appendix 2: Policy Area).

The policy is intended to complement other relevant policy and regulatory requirements and should be read in conjunction with these.

4.0 Aim and Objectives

This policy aims to minimise the impact of the location and construction of jetties and related development (e.g. boat ramps, boat sheds, land

backed berths and slipping facilities - see Appendix 1 for definitions of the terms 'jetty' and 'related development') on the natural and regionally significant waterways of the Peel region.

In this respect, the objective of this policy is to control the location and construction of jetties to:

- (a) prevent the alienation of waterways and foreshores from public use and enjoyment;
- (b) provide for safe and effective use of the waterways for recreation and navigation;
- (c) ensure jetties and/or related development do not detract from the visual amenity of the waterways and its foreshores;
- (d) minimise adverse effects on the environmental values of the Peel region's waterways; and
- (e) prevent unacceptable effects on the hydrological processes and shorelines of the waterways.

5.0 Policy Statement

5.1 General Policy Position

- (a) On public foreshores and waterways the WAPC favours activities and development which benefit public access and use in preference to the private use of public land and waterways. For this reason, the following development is not permitted under this policy:
 - (i) the construction of new jetties for private use; or
 - (ii) the reconstruction or refurbishment of jetties and/or related structures which may have fallen into disrepair.

- (b) The WAPC does not support the construction of private jetties:
 - (i) upstream of South Western Highway on the Murray River or Bedingfeld Road on the Serpentine River;
 - (ii) around the Peel Inlet and Harvey Estuary, due to the shallow bathymetry and environmentally sensitive nature of these areas and the foreshores; and/or
 - (iii) in shallow waters or mud flats where their development would require dredging and on-going maintenance dredging to allow access by vessels.
- (c) Where this policy allows for the construction of a jetty, only one jetty will be permitted per freehold lot, regardless of whether the lot contains a single dwelling or multiple dwellings.
- (d) If a gazetted mooring area is declared, the WAPC will consider delegating authority to determine applications for individual moorings within the gazetted mooring area to the Department of Transport or the relevant local government.
- (e) There is a presumption against approving the construction of new boat sheds, boat lifts, drive on docking systems or wet boat pens.
- (f) The WAPC will only consider approving the construction of davits and/or boatlifts where they are required by a disabled person to access a vessel berthed at an existing licensed jetty.

(g) When assessing an application which proposes a new jetty, the WAPC will consider the effects (both separate and cumulative effects) upon the waterways and/or foreshore, including:

- (i) public access;
- (ii) alienation of the waterways and foreshores from public use;
- (iii) erosion;
- (iv) loss of foreshore vegetation;
- (v) obstructions to flood-ways or river flows;
- (vi) vessel navigation; and
- (vii) visual amenity.

5.2 Existing Structures

(a) The WAPC will consider approving applications to rebuild or reconfigure licensed jetties, subject to compliance with this policy.

(b) The relocation of an existing, licensed, private jetty fronting a public reserve may be approved providing it is shown that environmental and social benefits can be realised. The maximum relocation distance cannot be greater than 200 metres, and will only be considered if the relocation is on the same side of the waterway as the existing jetty.

(c) The WAPC does not support the rebuilding of jetties abutting or fronting public land, which may have fallen into a state of disrepair.

5.3 New Private Structures

(a) The WAPC will consider approving applications which propose a new private jetty abutting properties with high water mark titles, subject to clause 5.3(c) of this policy, providing:

- (i) the proposal will not have an adverse effect on the waterway bed or banks, riparian vegetation or flood flow;

(ii) the proposal is consistent with the dimension requirements and intent of this policy; and

(iv) the property was created by subdivision prior to 1979.

In this respect, the (then) Peel Inlet Management Authority did not support the construction of new jetties abutting properties with a high water mark from 1979 until it was disbanded in 2002. Since 2003 the WAPC has continued the practice of not supporting the construction of jetties for properties with a high water mark title, which were created after 1979. This policy continues that practice.

(b) Where a proposed jetty raises navigational safety issues, the WAPC will obtain specific advice from the Department of Transport on this matter.

5.4 Permitted Jetty Areas

(a) *Rodoreda Crescent*

The WAPC will consider approving applications to construct jetties (excluding boat ramps and slipways) on or abutting Reserve 40109, Ravenswood, which are consistent with:

(i) the current management plan for Reserve 40109; and

(ii) the intent and dimension requirements of this policy.

(b) *Willow Gardens*

The WAPC will consider approving boat pens divided by a shared jetty for Lots 1 through 17 (inclusive) Willow Gardens, South Yunderup, provided these are consistent with the intent and dimension requirements of this policy.

(c) *The Murray River Delta*

The WAPC will consider approving applications to construct jetties on or abutting Cooleenup Island, Yunderup Island or Ballee Island, in the Murray River delta, where these jetties are required to access private property on the islands.

In regard to accessing lots within the Murray River delta, the WAPC does appreciate the problems of severance from the mainland and the peculiarities of access associated with tidal movements, however, it needs to be acknowledged these are readily-observable drawbacks that are intrinsic to island lots.

The above notwithstanding, options for providing an appropriate level of shared / common access to lots within the Murray River delta are being investigated. Until those investigations are complete, the WAPC does not support the construction of dedicated mainland jetties for island lots, as this may prejudice options for providing an appropriate level of access to lots within the Murray River delta.

5.5 Public Boating Facilities

The WAPC will support the provision of public boating facilities where strategic planning identifies a need and the proponent has sufficiently addressed all planning, waterway navigation, landscape, local amenity and environmental matters relevant to the proposal.

5.6 Design Requirements

- (a) Jetties are to be located and designed so as to:
- (i) not have a detrimental effect on the amenity of the location;
 - (ii) not detract from the use of an adjacent jetty, or jetties;

- (iii) not compromise the safety of other users of the river and foreshore areas; and
- (iv) minimise impacts on the river bank and associated vegetation.

- (b) The following dimension requirements apply:

- (i) jetties are to be contained within a 6m x 6m envelope measured from the shoreline to the outside edge of the jetty;
- (ii) the inside (landward) edge of the jetty head must be at least 1.2m from the bank;
- (iii) jetty access legs and jetty heads are to be no wider than 1.5m; and
- (iv) the dimensions are to include any lower decking.

- (c) There is a presumption against the approval of jetties where the water depth is insufficient to berth a boat in one position, but sufficient to berth a boat in another, for example, in regard to an L or T shaped jetty, where a boat could not be berthed against the access leg but could be berthed against the jetty head.

- (d) There is a presumption against the approval of jetties exceeding the maximum dimensions allowed by this policy, for the purpose of berthing more than one vessel and/or berthing a vessel exceeding the berthing capacity of a jetty constructed to the maximum dimensions allowed by this policy.

- (e) Mooring piles will be allowed to compensate for the limit of a jetty width at the head and should be contained within the jetty envelope. A maximum of 2 mooring piles may be approved in association with any one jetty.

- (f) Jetties are, preferably, to be centred in relation to the freehold lot with which they are associated, however, where this is not possible, they should be set back at least 4.5m from the side boundaries of abutting properties unless they are shared structures.
- (g) The WAPC may require the proponent construct a retaining wall and/or undertake rehabilitation work adjacent to a proposed jetty in order to protect the riverbanks.

5.7 Construction Requirements

- (a) Jetties are to be constructed to Australian Standards.
- (b) Where any damage to the foreshore, river bank and/or any riparian vegetation occurs as a result of works undertaken for jetties the affected location(s) and/or feature(s) are to be rehabilitated or replaced (as applicable).
- (c) Any residual construction materials and other deleterious matter within the curtilage of a jetty is to be removed from the river bed, bank and foreshore, and these locations rehabilitated and left clean.
- (d) Jetties are to be constructed of materials compatible with the amenity of the foreshore environment.
- (e) The materials and finishes used are to be consistent / compatible with other existing development immediately abutting or adjoining the proposed development.

and, therefore, any application to construct a jetty requires authorisation on behalf of the State of Western Australia. This authorisation may be obtained from an appropriate officer of the Department of Planning's Peel region office.

Applications are authorised only as acknowledgement of, and to facilitate processing of the application under the PRS and no other endorsement, undertaking or assessment is made or intended. Authorisation of an application does not represent approval under the PRS.

Where a proposed application is clearly inconsistent with the provisions of this policy, the Department of Planning, or any other agency authorised to sign an application form on behalf of the Crown as landowner, may decline to sign the Peel Region Scheme Form 1 (Application for Planning Approval).

- (c) Applications for development approval under the PRS are to be lodged with the relevant local government.

The local government is to forward the application to the WAPC within seven days.

- (d) The WAPC, prior to determining development applications for jetties, may consult with and have due regard for the advice and/or the recommendations of the relevant local government and agencies such as the Department of Water, the Department of Transport and any other agencies it considers appropriate.

6.0 Application Process

- (a) The construction of jetties within the Waterways reservation of the PRS requires WAPC approval.
- (b) The natural waterways of the Peel region are predominantly Crown land

- (e) The WAPC, prior to determining development applications for jetties, is to have due regard to the provisions of this policy.

- (f) Jetties may also require:
- (i) planning approval under the local planning scheme, administered by the relevant local government;
 - (ii) a building licence granted by the relevant local government; and/or
 - (iii) a jetty licence under the *Jetties Act 1926*, which is administered by the Department of Transport.

A jetty licence is required where the structure is, as defined under section 3 of the *Jetties Act 1926*, a wharf, pier, grid, slip, landing place, stage, platform, or similar structure, whether fixed or floating, erected or placed, wholly or in part, in, on or over any waters and any ramp which is or may be used for the purpose of launching or landing a vessel.

7.0 Implementation

This policy will be implemented by the WAPC and the relevant local governments through the development control process set out in the PRS.

Appendix 1

Definitions

Artificial Waterway

means an artificial channel, lake, harbour or embayment, for navigational, ornamental and recreational purposes, or for any of those purposes, and includes any addition to, or alteration of, an artificial waterway as so defined.

High Water Mark

means the level reached by the river at the maximum recorded value or highest point of evidence (e.g. 1.9m recorded at Barrack Street in 1945).

Jetty

means a jetty (whether 'T', 'L', finger jetty or any other configuration), a quay, quayside, wharf, pier, landing place, landing stage or similar facility used for the berthing or mooring of watercraft of any kind and/or in association with swimming activities and/or other leisure pastimes.

Where this policy makes reference to a jetty, the term 'jetty' may also be taken to refer to related development, as defined in this policy.

Mooring Piles

means piles, whether wooden or steel, used to secure a vessel by attaching the vessel to the piles.

Natural Waterway

means any inland or coastal land below the high water mark other than an artificial waterway.

Public Jetty

means a jetty owned by a public authority for use by the public for recreational water based pursuits including fishing, swimming and temporary short-term mooring of vessels. With approval, may also be used by commercial operators as a picking up and setting down point for embarking and disembarking passengers.

Related Development

means:

- (a) any other structure or works, besides those identified in the above definition for 'jetty', that may be established to achieve a purpose similar to, or ancillary to the purpose of a jetty;
- (b) any incidental structure or works that may assist in the function of a jetty (e.g. a jetty crossover, a gangway, steps, a ladder, railing, lighting, seating affixed to a jetty, davits, a mooring pile, a mooring, a berth, a dock, a pen or any combination of such facilities);
- (c) a launching ramp or other means by which water craft may be launched into and/or retrieved from a waterway;
- (d) a revetment wall or other retaining wall erected on the immediate bank of a waterway.

Examples of related development include boat ramps, boat sheds, land backed berths and slipping facilities.

Appendix 2

Policy Area

See the following plans for clarification in regard to which waterways the draft policy applies to.

DRAFT
FOR PUBLIC COMMENT

POLICY AREA









Policy applies to natural and regionally significant artificial waterways which are both within the policy area and the Waterways reservation.

Plan 1

Plan 2

Plan 3

Legend

-  Policy Area
- Peel Region Scheme Reservations**
-  Other Regional Roads
-  Public Purposes
-  Primary Regional Roads
-  Railways
-  Regional Open Space
-  State Forests
-  Waterways
- Peel Region Scheme Zones**
-  Urban
-  Urban Deferred
-  Regional Centre
-  Industrial
-  Private Recreation
-  Rural

Government of Western Australia
Department of Planning



DATE: 25/08/2011

**Draft
PRS Boating Facilities
Policy Area**

1:150,000



Legend

Artificial waterways
not subject to this policy

Cadastral

Peel Region Scheme Reservations

Other Regional Roads

Public Purposes

Primary Regional Roads

Railways

Regional Open Space

State Forests

Waterways

Peel Region Scheme Zones

Urban

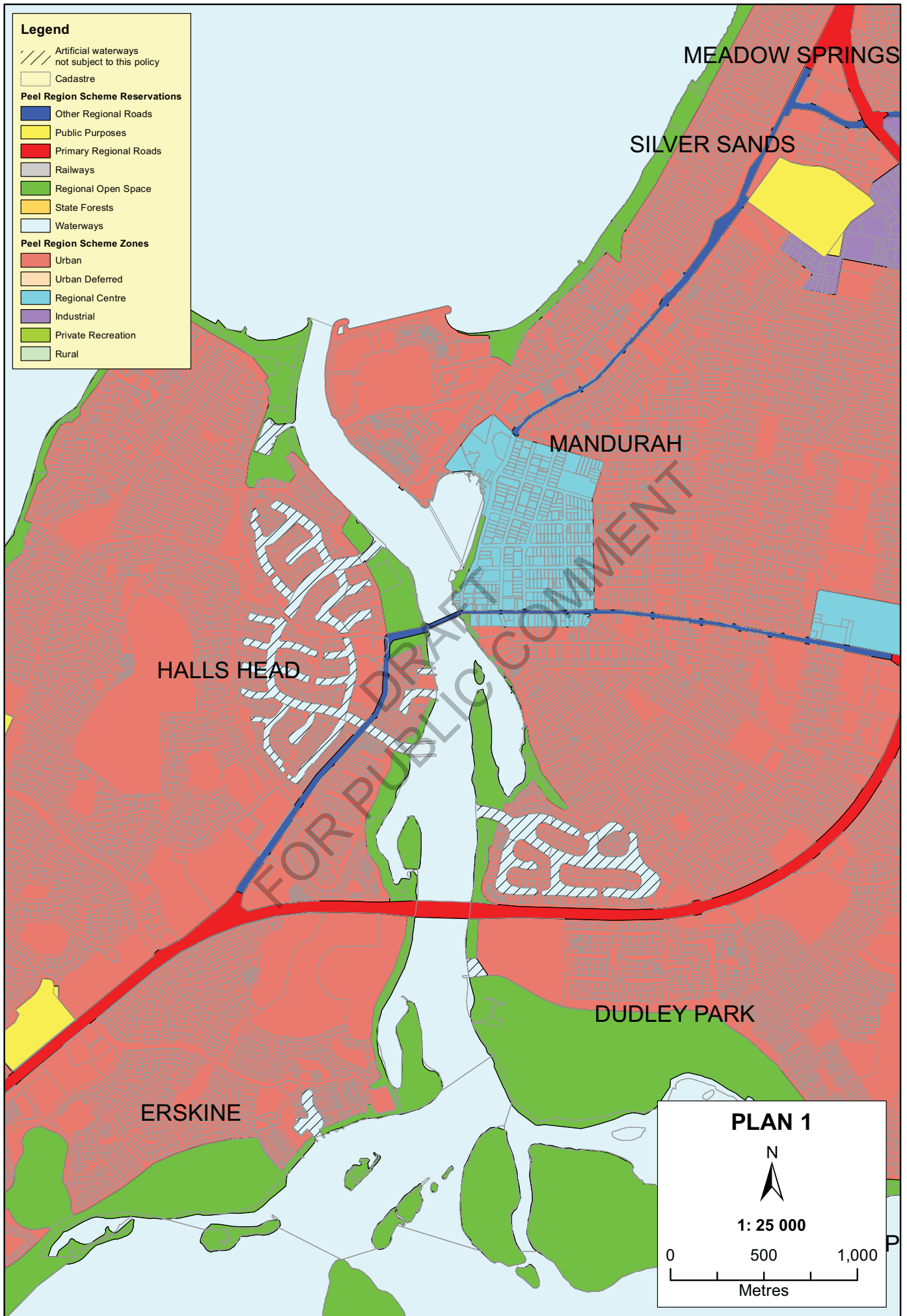
Urban Deferred

Regional Centre

Industrial

Private Recreation

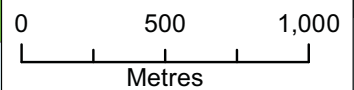
Rural



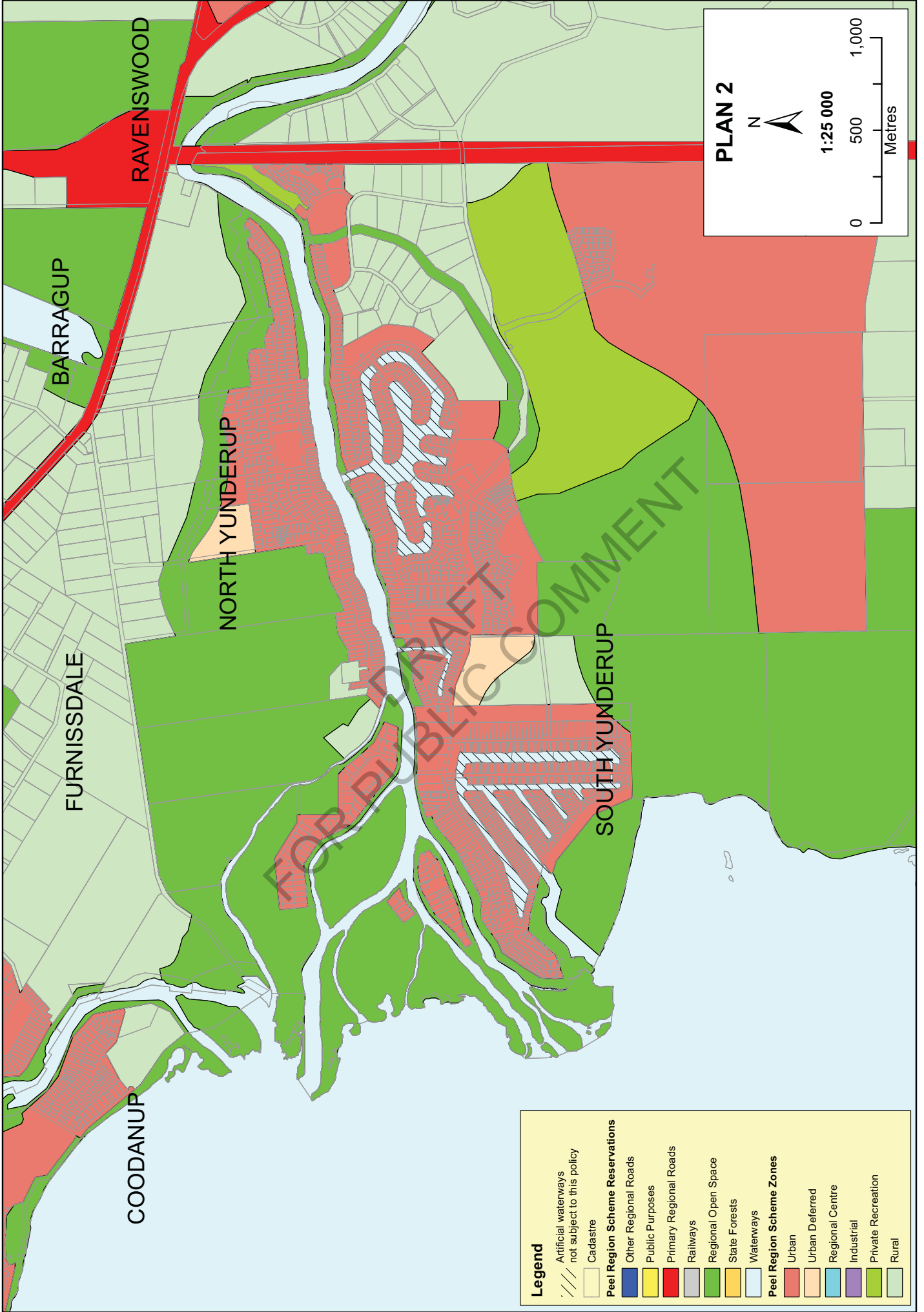
PLAN 1



1: 25 000



Metres



PLAN 2

N

1:25 000

0 500 1,000

Metres

Legend

- Artificial waterways not subject to this policy
- Cadastral
- Peel Region Scheme Reservations**
 - Other Regional Roads
 - Public Purposes
 - Primary Regional Roads
 - Railways
 - Regional Open Space
 - State Forests
 - Waterways
- Peel Region Scheme Zones**
 - Urban
 - Urban Deferred
 - Regional Centre
 - Industrial
 - Private Recreation
 - Rural

COODANUP

FURNISSDALE

BARRAGUP

RAVENSWOOD

NORTH YUNDERUP

SOUTH YUNDERUP

FOR DRAFT COMMENT



Legend	
	Artificial waterways not subject to this policy
	Cadastral
Peel Region Scheme Reservations	
	Other Regional Roads
	Regional Open Space
	Primary Regional Roads
	Railways
	Regional Open Space
	State Forests
	Waterways
Peel Region Scheme Zones	
	Urban
	Urban Deferred
	Regional Centre
	Industrial
	Private Recreation
	Rural

PLAN 3

N

1: 25000

0 500 1,000
Metres

JURISDICTION : STATE ADMINISTRATIVE TRIBUNAL

STREAM : DEVELOPMENT & RESOURCES

ACT : PLANNING AND DEVELOPMENT ACT 2005 (WA)

CITATION : BLISSETT and WESTERN AUSTRALIAN
PLANNING COMMISSION [2011] WASAT 186

MEMBER : MR L GRAHAM (SENIOR SESSIONAL MEMBER)

HEARD : DETERMINED ON THE DOCUMENTS

DELIVERED : 22 NOVEMBER 2011

FILE NO/S : DR 156 of 2011

BETWEEN : MALCOLM BLISSETT
Applicant

AND

WESTERN AUSTRALIAN PLANNING
COMMISSION
Respondent

Catchwords:

Town planning - Development - Refusal - Alienation of foreshore land and waterway - Undesirable precedent - Revetment - Safe and comfortable access to and from mainland - Broader public interest - Non-conforming areas

Legislation:

Peel Region Scheme, cl 5, cl 6, cl 10(a), cl 33, cl 34
Planning and Development Act 2005 (WA), s 251(1)

Result:

The application for review is dismissed
The decision under review is affirmed

Category: B

Representation:

Counsel:

Applicant : Self-represented
Respondent : Mr A O'Brien

Solicitors:

Applicant : Self-represented
Respondent : N/A

Case(s) referred to in decision(s):

Nicholls and Western Australian Planning Commission [2005] WASAT 40
Plesa Pty Ltd and Western Australian Planning Commission [2010] WASAT 58
Riviera Properties Projects PL v East Gippsland SC [2004] VCAT 2605
The Executor of the Estate of Terence Keith Haigh and Mary Patricia Haigh and
Western Australian Planning Commission [2007] WASAT 303
Weedon and Shire of Murray [2006] WASAT 128

REASONS FOR DECISION OF THE TRIBUNAL:

Summary of Tribunal's decision

1 This matter involved an application for review by Mr Malcolm Blissett of the refusal by the Western Australian Planning Commission to grant planning approval under the *Peel Region Scheme* for the construction of a jetty on public foreshore land on the south (mainland) side of the Minjoogup branch of the Murray River.

2 The applicant has a property on the north (island) side of the river and owns a jetty on public foreshore land from which he negotiates access to the mainland by pontoon. Mr Blissett, in effect, sought approval for a second jetty.

3 The reasons for refusal were that the proposed jetty would conflict with public policy - specifically, the alienation of the foreshore and waterway, a reduced capacity for public access and use, degradation of the landscape - and would set an undesirable precedent. The applicant sought approval in order to negotiate safe and comfortable access for his family and himself between the island and the mainland, and a determination by the State Administrative Tribunal on the merits of the case.

4 The Tribunal examined the relevant statutory and policy documents and the issues raised by the parties, including that of precedent.

5 The principal issue before the Tribunal was that of the conflicting need for public and private access to the river by way of jetties and other facilities against the need to protect the river foreshore, its vegetation and natural habitat.

6 The Tribunal recognised that the overriding intent of the statutory and policy documents is to protect the natural environment, and to ensure that the number of boating facilities on the waterway are controlled, and that the alienation of the waterway and foreshore is minimised.

7 Although the Tribunal recognised the argument of the applicant for safe and comfortable access to and from the mainland by way of a new private jetty, it was not of sufficient substance to outweigh the broader public interest and that an approval could give rise to other like applications to the detriment of a narrow section of the river.

8 The application for review was therefore dismissed.

Introduction

9 This matter involves an application by Mr Malcolm Blissett (applicant), pursuant to s 251(1) of the *Planning and Development Act 2005* (WA) (PD Act), for review of a refusal by the Western Australian Planning Commission (Commission or respondent) to grant planning approval for the construction of a jetty on the Murray River foreshore obliquely opposite his property at Lot 79 Minjugup Terrace on Yunderup Island. The proposed development, costing some \$7,000, would fall within the Shire of Murray (Shire).

Subject land and locality

10 The waterway in which the proposed jetty would be constructed is part of the Murray River delta. The Murray River (and its Minjoogup branch) is owned by the Crown and falls within the Waterways reservation under the *Peel Region Scheme* (PRS).

11 The proposed jetty abuts a foreshore area which is a road reserve. The area has never been dedicated for that purpose.

12 The foreshore area, which is positioned between the rear boundary of residential lots (fronting Lever Way and Kruger Loop) and the river, is approximately 40 - 55 metres wide and falls within the 'Regional Open Space' (ROS) reservation under the PRS.

13 The predominant character of the locality in which the proposed jetty would be built (the Minjoogup foreshore) is that of a partly cleared river foreshore with low level indigenous trees with patches of undergrowth. There is fringing remnant vegetation along the river bank.

14 The proposed jetty would be accessed by means of an existing narrow limestone track constructed and maintained by the Shire to facilitate access to some five revetments along the foreshore area. These revetments, which are small clearings along the water's edge, have been established for the berthing and mooring of boats and the parking of cars, and provide mainland access for the owners of Yunderup Island lots.

15 It is intended that the proposed jetty would be constructed at one of these revetments, some 80 metres from the applicant's existing foreshore jetty on the opposite (island) side of the river.

Background

16 The application for planning approval, dated 7 January 2011, was received by the respondent on 18 January 2011. The application for a 6 metre by 1.5 metre jetty was referred to relevant agencies for comment.

17 In its undated response the Shire advised:

... that it does not support the proposal as the jetty does not comply with Pt 4.1 of the Peel Inlet Advisory Council's Boating Facilities, Jetties and Structures WS 3.4 Position Statement.

18 The Department of Water (DoW) provided a similar response to the Shire and advised on 17 February 2011 that it was unable to support the application. The Department of Transport advised on 7 February 2011 that it had no objection to the proposal subject to conditions.

19 On 21 March 2011 the respondent advised that it had refused the application for the following reasons:

1. The proposed jetty conflicts with the principles and content of the Peel Inlet Management Council Position Statement Boating Facilities, Jetties and Structures WS 3.4.
2. The proposed jetty would have a detrimental effect upon the Minjoogup foreshore and waterway branch in terms of:
 - (a) alienation of the foreshore and waterway;
 - (b) reduced capacity for public access and use; and
 - (c) degradation of the landscape.
3. Approval of the proposed jetty would set an undesirable precedent for the approval of further jetties on the mainland for Murray River delta island landowners, thereby compounding the impacts in (2) above and leading to detrimental impacts on the environmental and landscape values of the Minjoogup foreshore and Murray River delta islands.

20 On 11 May 2011 the applicant lodged an application for review of the respondent's decision with the Tribunal.

Legislative and policy framework

Peel Region Scheme

21 Clause 5 of the PRS states:

The purposes of the Scheme are to -

- (a) provide for the reservation and protection of land for regional transport, conservation, recreation and public uses[.]

...

22 The aims of the PRS in cl 6 include:

...

- (c) protect as regional open space the region's coastal foreshores, the foreshores of the Serpentine, Murray and Harvey Rivers and the Peel Inlet and Harvey Estuary, as well as other areas of regional conservation significance and areas for regional recreational facilities[.]

...

23 Clause 10(a) of the PRS states:

Land is reserved under the Scheme for the following public purposes -

- (a) Regional Open Space - to protect the natural environment, provide recreational opportunities, safeguard important landscapes and provide for public access[.]

24 Consultation with other authorities is covered under cl 33 of the PRS:

- (1) The Commission may consult on a proposed development with any public authority it considers appropriate.

...

25 Clause 34 of the PRS covers matters to be considered by the Commission:

The Commission in considering an application for planning approval is to have regard to such of the following matters as are in the opinion of the Commission relevant to the development that is the subject of the application -

...

- (m) the likely effect of the proposal on the natural environment and any means that are proposed to protect or to mitigate impacts on the natural environment;

...

- (y) the potential loss of any community service or benefit resulting from the planning approval;
- (z) any relevant submissions received on the application;
- (za) any recommendations received from a local government under clause 30(3);
- ...
- (zc) any other planning consideration the Commission considers relevant.

Peel Inlet Advisory Council - Position Statement boating facilities, jetties and structures - WS 3.4 (WS 3.4)

26 The purpose of WS 3.4 in cl 1 is:

... to ensure that the potential impacts associated with the location and construction of structures such as jetties ... are minimised.

27 The objective of WS 3.4 in cl 1 is:

... to ensure that waterways environmental, aesthetic and social impacts associated with boating structures potential impacts are minimised, that the number of structures is controlled and that the alienation of public waterways and foreshore areas is minimised.

28 Under cl 2 (Cumulative Impacts) of WS 3.4 it states:

The cumulative impacts of such structures on or adjacent to waterways, including public access and possible alienation of the foreshore from public use, erosion, loss of foreshore vegetation, obstructions to floodways or river flows, vessel navigation and visual obstruction will be considered when assessing such proposals.

29 Also, under cl 2 (Beneficial Use of Waterways) of WS 3.4 it states:

The Council's aim is to ensure that the proliferation of any such structures in concentrated areas to the detriment of other values and or uses is minimised. Individual applications will be assessed on their merits, however local and regional planning for the overall benefit of the waterways will also be considered.

30 Under cl 4.1 (Private Structures and Jetties (Riverine)) of WS 3.4 the question of proposals adjacent to public land is addressed:

[Peel Inlet Advisory Council] will not recommend approval of applications for new private jetties, boat ramps, slipways or structures abutting or fronting public land. [Peel Inlet Advisory Council] will not recommend

approval for applications to rebuild unlicensed old jetties adjacent to public land that may have fallen into disrepair.

31 Again, under cl 4.1 of WS 3.4, three 'Non-conforming Areas' are listed where jetties may be recommended for approval. These are:

- Reserve 40109 (Rodoreda Crescent)
- Murray River Delta Islands
- Willow Gardens Lot 1-17 Reserve 38842 Mooring Area

32 The provisions under cl 4.1 relating to the Murray River Delta Islands state:

As access to lots on these islands is via the river and foreshore reserves, [the DoW] will consider recommending approval of applications for jetty licenses [sic] (excluding boat ramps and slipways) in these locations. Preference will be given to applications for shared jetties, with the preferred design being for 'land-backed' types due to the narrow river channels.

Planning issues

33 The principal planning issues are:

- 1) Is the proposed development consistent with the provisions of the relevant statutory and policy documents?
- 2) Would an approval create an undesirable precedent for similar applications?

Assessment of the proposal

The matter of conservation versus development

34 The balance between the protection of river foreshores for conservation purposes and their development for jetties and other boating facilities (boat ramps, boat sheds, land-backed berths and slipping facilities) in this locality is a changing relationship. That is to say that whereas in the 1920s the balance was in favour of conservation with limited foreshore development, the situation today is very different due to nearby residential development and the pressure from residents and the general public for access to and from the waterways.

35 In order to bring some certainty to the approval process, three so-called 'non-conforming' areas have been nominated in WS 3.4 where

jetties may be recommended for approval by the Peel Inlet Advisory Council (PIAC) at Reserve 40109 (Rodoreda Crescent), Murray River Delta Islands and Willow Gardens Lot 1 - 17 Reserve 38842 Mooring Area.

36 However, the situation is complicated by jetties and mooring facilities located outside these three 'non-conforming' areas in the following forms:

- privately owned jetties serving mainland properties;
- privately owned 'coinciding' mainland jetties serving Culeenup and Yunderup Islands;
- a nearby public jetty and boat ramp at the end of Young Road, South Yunderup, as well as a public jetty at the western end of Culeenup Road, North Yunderup. Also, a floating jetty has been installed at the end of Strain Glen; and
- five revetment areas along the Minjoogup foreshore.

37 In its statement of issues, facts and contentions (SIFC), dated 1 July 2011, the respondent advises at para 15:

There are ten privately owned jetties abutting the Minjoogup foreshore. Of these:-

- one is a coinciding mainland jetty serving a lot on Culeenup Island;
- two are coinciding mainland jetties serving properties on Yunderup Island;
- five serve mainland properties abutting Rivergum Esplanade; and
- two are yet to be confirmed.

38 In the applicant's answer to the respondent's SIFC received by the Tribunal on 5 August 2011 he advises:

... The foreshore opposite Yunderup Island has been used for jetty access historically (since 1972) and three licensed jetties abutting it are owned by the owners of Lots 72, 73 and 74 Yunderup Island.

39 This statement was supported by photographic evidence.

39 In its SIFC the respondent advises at para 16:

All of the existing private jetties are historical. Since 1976, the construction of new jetties has not been supported unless consistent with WS 3.4.

40 Although the applicant takes some issue with the above statement, what is clear is that the response from DoW, under whose aegis the PIAC falls, did not support the current proposal for the reason outlined in cl 4.1 of WS 3.4.

41 On this point the Tribunal notes an apparent inconsistency between the wording in cl 4.1 at [30] above where the Council will not recommend approval for new private jetties on public land, and the provisions of cl 2 of WS 3.4 at [29] above where 'individual applications will be assessed on their merits'.

42 However, although the Tribunal will have regard to the overall intent of WS 3.4 it is not bound by its provisions. It will determine the matter on the merits of the case.

43 In that respect it is clear to the Tribunal that the overall intent of the PRS and WS 3.4 is to protect the natural environment and to ensure that the number of boating facilities on the waterways is strictly controlled and that the alienation of public waterways and foreshore areas is minimised.

The matter of the Murray River Delta Islands

44 As explained in [31] above the Murray River Delta Islands comprise one of three 'non-conforming' areas where jetties may be recommended for approval. However, it is the wording of cl 4.1 of WS 3.4 in relation to the Islands that is at issue between the parties.

45 In the respondent's written submission dated 22 August 2011, at para 25 it is argued:

WS 3.4 specifically identifies the non-conforming area as the 'Murray River Delta Islands', which does not include the mainland foreshore of the Murray River. The description of the non-conforming location refers to access to lots on these islands being via the river and foreshore reserve. The ordinary meaning is a description of how one may get on to the island lots. It does not refer to access to the mainland from the delta islands, or elsewhere. The foreshore referred to in WS 3.4, in regard to that non-conforming area, is the land on the various islands separating the freehold lots from the river. The foreshore where the proposed jetty would be located is part of the 'mainland' and is not located on an island within the delta. The respondent submits the proposed jetty would not be located within one of the non-conforming areas identified in WS 3.4.

46 In the applicant's answer to the respondent's written submission dated 5 September 2011, he argues:

... the only real issue I see as having to be decided in this matter is firstly what [is] the real meaning of WS 3.4 and whether the mainland foreshore is a non[-]conforming reserve.

As stated above the literal interpretation of WS 3.4 can only be that it refers to 'foreshore reserves' (plural) and 'in these locations' (plural). The spiritual meaning of WS 3.4 can only be that the legislators were referring to the obvious fact that if a jetty is required for safe and proper access on the islands it is similarly required for safe and proper access to and from the mainland.

47 In the view of the Tribunal the argument of the respondent is both persuasive and correct. The use of the plural form (foreshores) refers to the foreshore on several individual islands and does not extend to the mainland. If cl 4.1 of WS 3.4 was specific to Yunderup Island only, then the use of the plural form (foreshores) could well be argued to include the mainland.

48 However, as explained in [42] above, the Tribunal is not bound by the provisions of WS 3.4 but will have regard to them. What the Tribunal has before it is a development proposal for a jetty on the mainland and it will deal with the matter on the merits of the case.

The matter of undesirable precedent

49 In *Nicholls and Western Australian Planning Commission* [2005] WASAT 40 (*Nicholls*), the concept of adverse planning precedent was discussed. The Tribunal advised that for precedent to be a relevant planning consideration, each of the following two tests must be satisfied:

- 1) that the proposed development or subdivision is not in itself unobjectionable; and
- 2) that there is more than a mere chance or possibility that there may be undistinguishable applications.

50 In the respondent's SIFC at paras 30 and 32 it is argued:

Approval of the jetty within a natural waterway, abutting a public foreshore, would have detrimental effects contrary to clause 10(a) of the PRS, namely:-

- (a) alienation of the foreshore area and river;

- (b) interference with public access and use of the foreshore area and river;
- (c) negative impact upon visual amenity of the foreshore area and river; and
- (d) loss of foreshore vegetation.

...

Individually and collectively, jetties (together with associated watercraft and fixtures) encompass an area of the waterway that tends to be perceived as private space. Foreshore space used for long intervals of car parking in association with such jetties compounds the perception of exclusion for members of the public. The actual and perceived claim upon these spaces produces a sense of intrusion and thereby reduces the comfort, amenity and perceived availability of the foreshore and water space for members of the public.

51 In his response the applicant argues:

- (a) residents on the islands have had uninterrupted access to the foreshore and river since 1927 when the islands were developed;
- (b) the issue of a jetty licence does not prevent the public having access to an area where they would have access prior to the issue of a licence, for example in a foreshore reserve area;
- (c) there are five allocated areas (revetments) for the islanders to access the island from the reserve. This takes up a very small proportion of the public reserve area along the river;
- (d) there will be no clearing of vegetation as the proposed jetty is to be constructed on a revetment; and
- (e) the applicant has moored a vessel and parked in the same area for the last ten (10) years. A proposed finger jetty will not aggravate or interfere with the foreshore but will make for safe travel.

52 In the respondent's written submission it is argued at paras 29 and 30 that:

There is more than a mere chance or possibility that there may be later undistinguishable applications ...

The cumulative impacts of developments such as the proposal would have significant adverse effect on the natural environment, and on the recreational opportunities and public access to the river foreshore and the waterway ...

53 In order to give some context to the respondent's submission, Mr Aiden O'Brien, Senior Planning Officer, Peel Region, at the Department of Planning advises in his witness statement of 22 August 2011:

- the Minjoogup foreshore has a length of some 570 metres;
- if 68 to 70 jetties with 1.5 m wide decking (as proposed in this application) were constructed side by side on the mainland foreshore by landowners on Yunderup Island who currently do not have a jetty on the mainland, the structures would take up some 102 - 105 metres of foreshore; [and]
- if adequate manoeuvring space between jetties was taken into account for a vessel 6 metres long with a 2.6 m beam, the additional jetties and vessels would occupy 306 - 315 metres of the foreshore, with no allowance made for existing jetties.

54 Although the Tribunal places limited weight on the hypothetical scenario advanced by Mr O'Brien, it does, nevertheless, place a worst case scenario into perspective.

55 The Tribunal is further advised in *Weedon and Shire of Murray* [2006] WASAT 128 (*Weedon*), *The Executor of the Estate of Terence Keith Haigh and Mary Patricia Haigh and Western Australian Planning Commission* [2007] WASAT 303 (*Haigh*) and *Plesa Pty Ltd and Western Australian Planning Commission* [2010] WASAT 58 (*Plesa*).

56 In *Weedon* the Tribunal refused an application to construct a new private jetty in the Murray River, abutting the ROS reservation, opposite Lot 72 Banksia Terrace, South Yunderup. In its discussion on the case the Tribunal advised, at [78]:

First, the nature of the proposed facility is essentially a private facility to be constructed mainly in a public reserve, a reserve that has several public objectives (including conservation, access and recreation). On its face, the jetty would have limited social benefits beyond its use by the applicant. There is no doubt that it would benefit the applicant [who is disabled], but the various public purposes of the reserve would not be relevantly advanced. Necessarily, the construction of a private jetty reduces public access to the river, whether or not there is any alienation of the land ...

57 In *Haigh* the Tribunal refused an application for retrospective approval for two mooring poles in the Murray River approximately six metres from the shore opposite Lot 170 Foreshore Cove, South Yunderup. A small gangway had been assembled between the

foreshore and at least one boat moored to the poles, thus appearing as a compact jetty-style structure.

58 Again, in *Haigh* the Tribunal advised:

81 Much of the applicants' supporting evidence in effect deals with the personal circumstances and convenience of Mr Haigh and others who might be in a similar position to him. As is well established in planning law, such personal considerations, with respect, count for little when abstract issues of land use and development approval are to be considered. In particular, they do not outweigh the broader public interest and policy intent[.]

...

85 Precedent, in the sense of consistency of administrative decision-making, is a value recognised in both administrative law and public administration. An approval given by the Tribunal upon review in this case would naturally lead to an expectation on the part of others in the same position as Mr Haigh that their private access to the waterway would be similarly enhanced, wholly contrary to the policy settings already endorsed by the Tribunal. This situation should be avoided.

86 In the Tribunal's view, there are no arguments of any substance or relevance as regards either planning principle or planning law that would warrant departure from the policies and planning framework applied in *Weedon* which are equally applicable to the circumstances here.

59 In *Plesa* the application for review was brought against the Commission for a refusal for the construction of a small 'replacement' jetty on the Minjoogup foreshore (mainland) directly opposite Yunderup Island. On the island side the applicant had a second small licensed jetty.

60 In his decision, Member P McNab (now Senior Member) advised at paras 78 and 79:

Further, it may be accepted that a precedent would be created in favour of the other lot owners in the delta who may make similar demands on the use of public foreshore in the area (that is, the respondent's submission as to the 'aggregate effect of up to 76 jetties').

Therefore, the Tribunal will only grant a temporary approval for Mr Patrick's development proposal. Such a decision cannot be regarded as a precedent establishing that delta island owners have a general 'right' to a mooring point on the public foreshore.

61 Clearly the above issues raised by the Tribunal in *Weedon, Haigh*
and *Plesa* are all relevant in this current case.

Discussion of the case

62 The matter before the Tribunal involves the proposed construction of
a private jetty (6 metres by 1.5 metres) on public land on the south
(mainland) side of the Minjoogup branch of the Murray River. The
applicant owns an existing jetty on public foreshore land adjacent to his
property on Yunderup Island at Lot 79 Minjugup Terrace on the north
(island) side of the river.

63 What is intended is that the applicant, who has lived on the island for
the last 10 years, would construct the new jetty at an existing revetment
on the mainland obliquely opposite his property some 80 metres away.
The width of the river between the island and the mainland is estimated at
some 30 - 40 metres wide.

64 As explained by the applicant in his response of 15 June 2011 to the
Tribunal's orders of 1 June 2011:

At various times of the year the level of the river drops to the point where
the only way to exit the boat is to walk through deep mud, at other times
the water level rises to the point where the only way to exit the vessel is
through ankle deep water making disembarkation more dangerous.

I am a senior citizen with a significant back problem. It is not
unreasonable to expect that I and my family be able to travel to and from
our property where we legally reside, safely. This is not possible without a
suitable jetty.

65 In considering the issue of private development on public land,
the Tribunal is assisted in *Riviera Properties Projects PL v East*
Gippsland SC [2004] VCAT 2605, where the Victorian Tribunal
observed, at [9],

... I do not think that it is sustainable to argue that the provision of a
private jetty, and[/]or a private mooring for a boat, within the Public Park
and Recreation Zone is inappropriate as a matter of general principle. It
seems to me that the issue to be determined is the question of whether or
not a jetty and[/]or mooring is appropriate in the particular circumstances
of the case. ...

66 This is essentially the argument of the applicant, with the issue being
about the need for safe access for his family and himself between
Yunderup Island and the mainland, and that the matter should be

determined on the merits of the case and having regard to the Tribunal's decision in *Plesa*.

67 The circumstance before the Tribunal is that the balance between the protection of river foreshores for conservation purposes and their development for jetties and other boating facilities is a constantly changing relationship, with pressure from nearby residents and the general public to use the river via private and public facilities increasing over time. Both state and local government are attempting to handle this demand via a statutory and policy framework.

68 To that end, the overall intent of the PRS and WS 3.4 is to protect the natural environment and to ensure that the number of boating facilities on the waterways is strictly controlled, and that the alienation of public waterways and foreshore areas is minimised.

69 On this matter the respondent advised in its SIFC at para 37 that:

Since WS 3.4 came into effect, no new private jetties have been approved in natural waterways abutting public foreshores equivalent to this ROS reservation unless consistent with WS 3.4. There have been a small number of cases where variations to the jetty dimensions stipulated in WS 3.4 have been permitted, where justified.

70 Although the applicant takes issue with this statement in the context of approvals given within the three 'non-conforming' areas, the Tribunal is satisfied that the relevant public authorities are attempting to limit development to the absolute minimum in order to protect the river and its foreshores.

71 In his submissions the applicant argues that the subject land falls within one of the three 'non-conforming' areas in the locality where jetties may be recommended for approval. However, although the Tribunal does not agree with the applicant on this point, it does agree that the proposed development can still be assessed and determined on the merits of the case.

72 In that sense, what the Tribunal is dealing with here is a development proposal on a narrow branch (Minjoogup branch) of the Harvey River which contains a number of private jetties on the island side (including one owned by the applicant) and a number of private jetties and five revetments for mooring craft on the mainland side. The applicant currently uses one of these revetments to access the river and his property on Yunderup Island via his pontoon vessel.

73 However, his proposal is to construct a private jetty at that revetment and in so doing restrict its use by others. In effect, public access to the river via the revetment would be compromised by the construction of a permanent structure intruding into the river at that point.

74 In fairness to the applicant it should be said that to construct a private jetty away from a revetment would lead to an even worse result, with the destruction of foreshore vegetation and wildlife habitat.

75 On the matter of the applicant's personal circumstances, it is explained in *Haigh* that personal considerations count for little in the context of the broader public interest and there is a significant risk that an approval in this case could give rise to other similar applications from residents on Yunderup Island and elsewhere.

76 In his submissions the applicant calls for reference to the provisions of the decision in *Plesa* where a conditional temporary approval was granted for a new jetty on the Minjoogup foreshore. Such an argument is not sustainable, because in *Plesa* the matter concerned a 'replacement' jetty (that is, replacing one jetty with another) which is not the case here, and the Tribunal was specific in drawing attention to the fact that *Plesa* '... cannot be regarded as a precedent establishing that delta island owners have a general "right" to a mooring point on the public foreshore'.

77 On this point, the fact that the applicant uses *Plesa* to advance the 'precedent' argument only confirms the belief by this Tribunal that an approval in this case could give rise to other similar applications.

78 Although the Tribunal recognises the arguments of the applicant, they are not of sufficient substance to outweigh the broader public interest and the ongoing attempts by public authorities to protect the waterway and foreshores.

79 The Tribunal determines that the proposed jetty intended for construction on the Minjoogup foreshore (mainland) be not allowed.

Orders

80 The Tribunal makes the following orders:

1. The application for review is dismissed.
2. The decision under review is affirmed.

I certify that this and the preceding [80] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

MR L GRAHAM, SENIOR SESSIONAL MEMBER