

RALPHS BAY SAVED – A TASMANIAN STORY

By Jane MacDonald¹ and Jess Feehely²

In June 2010 the Tasmanian Premier, the Hon David Bartlett MHA, announced plans to ban canal housing estates in Tasmania. He also accepted the Tasmanian Planning Commission's recommendation that the Walker Corporation's proposed \$300m, 477-lot canal housing and marina development in Ralphs Bay southern Tasmania be rejected³. This article reviews how a small community mobilised against the proposed development and successfully protected not only Ralphs Bay, but other areas of Tasmania from the damaging impacts of canal housing estates. Tasmania is the only Australian state to have escaped the environmental impacts of such developments.

Ralphs Bay

Ralphs Bay is a wide shallow bay of considerable ecological significance in the Derwent Estuary, south-east of Hobart. The bay is enclosed by the hook-shaped South Arm peninsula, the final landmass before the estuary meets the sea. Ralphs Bay contains extensive sandflats, some of which are protected within the Ralphs Bay Conservation Area at Lauderdale. The small coastal community of Lauderdale is located in the north eastern corner of the bay.

Ralphs Bay contains one of the most biodiverse saltmarsh vegetation communities in southern Tasmania⁴ and its sandflats deliver important ecosystem services such as denitrification, where bacteria in the sediments interact with pore waters and the water column to improve water quality.⁵ The extensive sandflats and fringing saltmarsh provide important habitat for a wide variety of invertebrate and microalgal species, which support a complex food web unique in the Derwent.

Migratory shorebirds such as Red-necked Stints arrive from Siberia each spring, and the bay contains one of Australia's most significant populations of Pied Oystercatchers. Critically endangered Spotted Handfish have also been recorded in the northern section of the bay.⁶

In addition to natural and scientific values, Ralphs Bay has significant aesthetic, community and recreational values enjoyed by residents and visitors.

Threats to Ralphs Bay

Australia's largest and oldest zinc smelter is located on the shores of the Derwent River, just upstream from the city of Hobart. The smelter, other industrial activities and urban runoff all impact on environmental values in the river. Levels of heavy metals such as zinc, lead, mercury and cadmium in the Derwent estuary are amongst the highest in Australia. Levels of zinc in oysters, lead in mussels and mercury in flathead in the Derwent consistently exceed recommended maximum levels.⁷ There is also evidence that while the sediments in Ralphs Bay exhibit relatively low levels of heavy metals, very high levels have been recorded in marine indicator species, such as flathead. This largely unexplained phenomenon has been referred to as 'the Ralphs Bay conundrum'.⁸

The Lauderdale community has lived with the prospect of a canal estate development in Ralphs Bay since an initial proposal by Tominex Holdings in 1999. While that proposal did not proceed, rumours of a large canal estate to be

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3 Tasmanian Premier, the Hon David Bartlett MHA, Answer to question without notice, Tasmanian Parliament, *Legislative Assembly Hansard*, 22 June 2010, <<http://www.parliament.tas.gov.au/HansardHouse/isyquery/60842a8e-766b-4b97-aa55-209197aa1a91/3/doc/>>

4 NV Prahalad, MJ Lacey and RE Mount, *The Future of the Derwent Estuary Saltmarshes and Tidal Freshwater Wetlands in Response to Sea Level Rise*, Technical report for the Derwent Estuary Program and NRM South, School of Geography and Environmental Studies, University of Tasmania, 2009

5 Derwent Estuary Program, *State of the Derwent Estuary 2003 – 2009*, at 74, viewed 2 September 2010, <<http://www.derwentestuary.org.au/>>

6 Save Ralphs Bay website, conference poster, *Ralphs Bay Values: natural, scientific, aesthetic, community*, <<http://saveralphsbay.org/images/events/PosterDerwentEst.pdf>> at 2 September 2010

7 Derwent Estuary Program, *Derwent Estuary Water Quality Improvement Plan for Heavy Metals*, April 2007, viewed 2 September 2010, <<http://www.derwentestuary.org.au/file.php?id=193>>

8 R. Eriksen, *Proof of evidence: Sediment and water quality (Heavy Metals) – Proposed Lauderdale Quay Development*, 2009, available at <www.planning.tas.gov.au>

developed by Walker Corporation began to circulate at the end of 2003.

On 15 March 2004, the then Acting Premier announced a three month community consultation regarding Walker Corporation's \$400m proposal for an 800-lot canal estate development to be called 'Ralphs Bay Village'.⁹

Over the next 5 years, the canal estate proposal varied, disappeared and reappeared. In February 2009, Walker Corporation's Draft Integrated Impact Statement detailed its plans for 'Lauderdale Quay', a 477-lot waterfront residential and marina development covering 146.5ha including the Ralphs Bay Conservation Area.¹⁰

The campaign to Save Ralphs Bay

The community group, Save Ralphs Bay Inc, was formed following a public meeting at the Lauderdale Hall on 17 March 2004, attended by approximately 500 people concerned about the proposed development. The constitutional objectives of Save Ralphs Bay Inc. are to oppose the development proposal, work towards the protection of the natural and aesthetic values of Ralphs Bay and to promote an approach to coastal planning in Tasmania aimed at preventing inappropriate development proposals.

The issues which concerned the group included:

- the sale of a significant Conservation Area for private development
- an assault on the sense of place experienced by residents of Lauderdale and other South Arm Peninsula communities: the development proposal was widely seen as inappropriate and 'un-Tasmanian'
- loss of beautiful natural vistas across the sandflats to Mount Wellington
- loss of critical feeding, roosting and nesting habitat for resident and migratory shorebirds, including listed threatened species
- loss of one of Tasmania's best windsurfing locations
- noise, dust, visual and traffic impacts over a period of years
- concerns regarding the ongoing cost burden on ratepayers for maintenance of the canals and the development in general
- impacts of sea level rise and severe weather events on the long-term viability and insurability of the development
- disturbance of polluted sediments, including risks of remobilised heavy metals entering the food chain and prejudicing water quality at nearby aquaculture facilities
- increased pollution of Ralphs Bay and the Derwent by urban and marina runoff
- risk of habitat loss and pollution impacts for the critically endangered Spotted Handfish
- increased Ross River fever risk
- disturbance of coastal acid sulphate soils, and
- loss of ecosystem services provided by the sandflats, including denitrification.

Organisational structure

Over the six years since its formation, over 30 people have been members of the Save Ralphs Bay Inc (SRB) working group, with around 12 active members at any one time. In addition to working group members, SRB developed an extensive community of supporters and expert advisers, with membership reaching close to 500 at peak times.

SRB has worked closely with Birds Tasmania throughout the campaign to protect Ralphs Bay and has maintained links with other environment and community groups.

⁹ Hon Paul Lennon MHA. Save Ralphs Bay, Media Background briefing notes: Brief History of the Campaign to Save Ralphs Bay 2004 – 2009, 16 February 2009

¹⁰ Walker Corporation, *Lauderdale Quay Draft Integrated Impact Statement Executive Summary 9 February 2009*, viewed 2 September 2010, <http://www.ralphsbay.net.au/DIIS/1.Lauderdale_Quay_DIIS_Executive_Summary.pdf>

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Skill set within the Save Ralphps Bay community

Although residents of the South Arm peninsula enjoy a peaceful lifestyle away from the city, the area is close to Hobart and has a population of over 8 000. From this community and broader networks, the Save Ralphps Bay campaign was offered skills, knowledge and experience in marine science, shorebirds, planning, law, journalism, media, design, politics, fundraising, photography, website design, communication, sign-making, machine embroidery, bookkeeping and more.

Widespread support for Save Ralphps Bay activities

A key component of the SRB campaign was building, gauging and publicising opposition for the proposed canal estate. Strategic activities included:

- early-morning roadside protests.¹¹ The responses of passing motorists were recorded and the results, showing well over 60% approval¹², were reported to politicians and the media
- encouraging members of the public to send letters to politicians. In 2004–2005, SRB collected and delivered 3 000 letters and personal messages opposing the development to Environment Minister, the Hon. Judy Jackson MHA. Thousands more letters were sent directly by members and the general public
- candidate surveys and candidates forums during election campaigns between 2004 and 2010. The majority of election candidates indicated that they did not support the development¹³
- several politicians also conducted their own surveys of public opinion, with the results of all surveys showing strong opposition to the proposal¹⁴, and
- fundraising activities allowed the wider Tasmanian community to show support for SRB, with well over \$150 000 raised to assist with legal costs. The total value of all contributions to the campaign (cash and in kind) probably exceeded \$500 000.

Save Ralphps Bay communication strategy

From the outset, SRB was committed to providing accurate, well-researched, well-presented information to the community, politicians and media on all issues relevant to the campaign.

SRB also endeavoured to promote community awareness and appreciation of the values of Ralphps Bay. In response to efforts by proponents to portray Ralphps Bay as a 'stinking mudflat', SRB communications emphasised the beautiful vistas, the quirky attractiveness of the Spotted Handfish, the significance of the bay to shorebirds, windsurfing opportunities and the contribution of the bay to the sense of place in Lauderdale.

Key elements of the SRB communication strategy included:

- keeping the community informed – newsletters¹⁵ delivered to thousands of households; SRB information stalls; letters to the editor; calls to talkback radio
- web-based communications – the SRB website holds an extensive archive of newsletters, media releases, submissions, videos, photographs, cartoons, poetry and links to key documents. Bulk emails from the website are used to keep hundreds of supporters informed
- providing the evidence – hosting public information evenings and rallies in City Hall where independent experts spoke on a range of relevant topics; a Ralphps Bay Expo, with field trips in the bay. SRB members also visited classes, conducted student field trips and provided comprehensive resource materials to science teachers¹⁶

11 Save Ralphps Bay, *Photos – Road Rage!*, viewed 2 September 2010, <http://srb.pmhclients.com/index.php/SRB/more/road_rage/>

12 Waves, 'thumbs-up' signs and smiles while sounding the vehicle's horn were recorded as overt approval. Frowns, angry gestures or comments were recorded as overt disapproval - well under 1% of passersby were recorded as expressing overt disapproval.

13 Save Ralphps Bay website, Media Releases, viewed 2 September 2010, <<http://srb.pmhclients.com/index.php/SRB/index2/C2/>>

14 Harry Quick MHR conducted a survey of the electorate in June 2004, which showed 67% opposition. A smaller survey by Lin Thorp MLC gave a similar result. Senator Paul Calvert conducted the largest survey (6 000 forms were distributed, with a 22% response rate), which showed 73% opposition.

15 Save Ralphps Bay website, Newsletters, viewed 7 September 2010, <<http://srb.pmhclients.com/index.php/SRB/index2/C3/>>

16 A presentation entitled '*The science behind the campaign to save Ralphps Bay*' was delivered at the 2008 Conference of the Science Teachers' Association of Tasmania; information resources were distributed at the 2008 Biology and Environmental Science Teachers' Association conference.

- lobbying – emails, letters, phone calls and meetings with local, state and federal politicians at pivotal decision-points. Briefing documents provided to members of the Legislative Council in relation to the *Ralphs Bay Conservation Area (Clarification) Bill 2006* undoubtedly played a role in the significant amendments made to the legislation (see below).
- getting media attention – media releases and briefing documents¹⁷ were distributed for all significant events, and
- keeping the campaign alive – building community support through Ralphs Bay Fairs, quiz nights, market stalls and eye-catching merchandise including cards, calendars and limited edition photographs.¹⁸ Countless cars in southern Tasmania sport a ‘Save Ralphs Bay’ sticker as a sign of support for the campaign.

Policy dimensions to the campaign to save Ralphs Bay

SRB took every opportunity to make formal submissions at all stages of the assessment of the proposed canal estate. The group also made submissions on a range of other relevant matters, including a draft recovery plan for Handfish; the draft Water Quality Improvement Plan for Derwent heavy metals; review of the Tasmanian Planning System; review of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act); the Inquiry into the establishment of marine protected areas within the Bruny Bioregion; a Joint Parliamentary Select Committee on Ethical Conduct; and the Tasmanian State Coastal Policy Review.¹⁹

Lack of an effective State Coastal Policy

Tasmania’s *State Coastal Policy 1996* is a much criticised document that provides little strategic guidance in relation to coastal management. As a result, the policy has been largely ineffective in achieving sustainable coastal development.

In 2004 the government announced a review of the *State Coastal Policy 1996*. An earlier draft of the revised policy was withdrawn and the review languished for years until in April 2010, a new draft was released for public comment. Most submissions lodged in response were highly critical of the draft for failing to provide consistent guidance or to take advantage of the advances in coastal management documents in other jurisdictions.²⁰

The SRB submission urged the government to follow the lead of Queensland, Victoria and NSW in introducing clear policy documents to identify and prevent inappropriate coastal development.

Canal estate bans

SRB’s arguments in opposition to the proposed canal estate were strengthened by the fact that canal estates have been banned elsewhere in Australia, due to their ecological impacts. Canal estates are prohibited by the NSW *State Environmental Planning Policy 50 – Canal Estate Development*²¹ and by the *Victorian Coastal Strategy 2008*.²²

In Tasmania, the Kingborough Council has also banned canal estates in its municipality.²³ SRB has repeatedly called for a statewide ban and in August 2006 lodged a draft Planning Directive with the Resource Planning and Development Commission (now Tasmanian Planning Commission) to prohibit canal estates throughout Tasmania.²⁴ While such a Planning Directive would not have affected the Walker Corporation proposal, it could have set an important benchmark for future coastal management in Tasmania.

17 Save Ralphs Bay website, background briefing documents in resources, viewed 7 September 2010, <<http://srb.pmhclients.com/index.php/SRB/index2/C4/>>

18 Save Ralphs Bay website, merchandise, viewed 7 September 2010, <<http://srb.pmhclients.com/index.php/marketing/merchandise/>>

19 Save Ralphs Bay website, Submissions, viewed 2 September 2010, <<http://srb.pmhclients.com/index.php/SRB/index2/C12/>>

20 See, for example, EDO Tasmania submission to the Review of the Draft State Coastal Policy 2008, available at <www.edo.org.au/edotas> and <www.planning.tas.gov.au>

21 NSW *State Environmental Planning Policy 50 – Canal Estate Development and NSW Coastal Policy 1997*, p.20

22 *Victorian Coastal Strategy 2008*, at 40

23 *Kingborough Planning Scheme 2000*, clause 5.2.1.8

24 Under s.9 of the *Land Use Planning and Approvals Act 1993* (Tas), a planning directive may be made in relation to “use, development, protection or conservation of any land requiring consistency for all municipal areas”. Any person may submit a draft planning directive to the Commission, who must make a recommendation to the Minister for Planning as to whether the draft directive should be assessed (s.10).

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In October 2006, the Commission recommended to the then Planning Minister, the Hon. Steve Kons MHA, that the proposed planning directive to implement a statewide canal estate ban be assessed. In January 2007, Mr Kons rejected that recommendation.

Shifting the goalposts: some important political decisions

Several key political decisions have affected the assessment of the proposed canal estate in Ralphs Bay. These related to the timing of the proposal, the method of assessment and the extent of protection afforded to the Ralphs Bay Conservation Area.

Assessment as a Project of State Significance

Under the *State Policies and Projects Act 1993* (Tas), a project may be declared a 'project of state significance' if it will have significant economic or environmental impacts, involves complex processes or will have significant infrastructure requirements.²⁵ From the outset, Walker Corporation expressed its desire for the canal estate development to be assessed as a project of state significance (PoSS).

A PoSS is not subject to the standard planning process. Instead, the development is subject to an 'integrated assessment' by the Tasmanian Planning Commission. An integrated assessment is carried out in accordance with any directions given by the Premier and is required to consider relevant environmental, social, economic and community issues.²⁶ The Commission generally consults with the public, local and state government agencies and develops Scope Guidelines for the assessment setting out the issues that must be addressed by the proponent.

Public comments are invited in respect of the integrated impact assessment documentation and the Commission may hold hearings in respect of any representations received.

At the conclusion of its assessment, the Commission publishes an Impact Assessment Report and makes a recommendation to the Premier regarding the PoSS. The Premier is not bound by the recommendations of the Commission, but approval of both Houses of Parliament is required if the government intends to make a decision that is contrary to those recommendations. Decisions in relation to a PoSS are generally not subject to appeal.²⁷

Playing the game: shelving the proposal until after the 2006 state election

An order declaring a project to be a project of state significance must be approved by both Houses of Parliament. Successful lobbying by SRB throughout 2005 had made the proposed canal estate a significant political issue, and particularly in the electorate of Franklin. SRB was confident that its lobbying efforts had secured sufficient support to defeat the proposal to declare the project a PoSS.

On 2 September 2005 Walker Corporation advised the Premier that it would not be proceeding with the proposed canal estate at Ralphs Bay on 'commercial grounds'. In March 2006 Labor was re-elected to government, with the third Labor member for Franklin being returned by an extremely narrow margin. On 6 July 2006, the Premier advised Parliament that Walker Corporation was resubmitting its Lauderdale Quay proposal because 'the uncertainty in the political environment had been replaced with certainty by the return of a majority government which made the commercial environment more attractive.'²⁸

'Clarifying' the extent of the Conservation Area

A principal concern in respect of the canal estate proposal had always been the fact that the development would

²⁵ To be eligible for declaration as a project of state significance, a project must possess at least two of the attributes listed in s.16 of the *State Policies and Projects Act 1993* (Tas)

²⁶ Sections 16 and 20(1) of the *State Policies and Projects Act*

²⁷ Pursuant to s.28 of the *State Policies and Projects Act*, no appeal, action, order of review or declaratory judgment can be pursued in respect of "any matter or thing arising out of or relating to the conditions specified in an order made under ss. 26(6), 26(8), 26A or 26B". However, judicial review can be pursued in relation to approval or refusal of a PoSS, as distinct from any proposed conditions.

²⁸ Tasmanian Parliament, *Hansard*, 6 July 2006 available at <www.parliament.tas.gov.au/HansardHouse>

destroy the sandflats of the Ralphs Bay Conservation Area. At the outset, Walker Corporation exploited legal uncertainty²⁹ to argue that the extent of the Conservation Area was restricted to the land above high water mark. In contrast, SRB and Birds Tasmania maintained that the Conservation Area clearly included the tidal sandflats.

In July 2005, the State Government announced that based on advice from the Solicitor-General, it intended to 'rectify an administrative error' and confirm that the Conservation Area terminated at high water mark.³⁰ SRB sought a review of this decision, referring to expert advice regarding surveying conventions. Minister Jackson acknowledged this conflicting advice and said that the issue would be determined as part of the Crown Lands Assessment and Classification (CLAC) process. Prior to the 2006 election, the Ralphs Bay Conservation Area was removed from the CLAC agenda.

When Premier Lennon announced in July 2006 that the Lauderdale Quay project would be re-submitted, he also foreshadowed his intention to 'introduce legislation to clear up uncertainties over the boundaries of the conservation zone in Lauderdale Quay and to ensure the beach is protected.'³¹

The Ralphs Bay Conservation Area (Clarification) Bill 2006³² was tabled on 29 August 2006. The effect of the Bill was to reduce the extent of the Ralphs Bay Conservation Area by approximately 90%, revoking the conservation status of the sandflats below high water mark, including the footprint of the proposed development. During debate on the Bill, the Planning Minister, the Hon. David Llewellyn MHA, confirmed that the government had no legal advice recommending the boundary be moved and that the Bill was 'a political decision'.³³

Disappointingly, the Bill was passed by the House of Assembly with the support of all Labor and Liberal members on 31 August 2006.

SRB obtained advice from Duncan Kerr MHR SC that:

getting rid of the inter-tidal zone's status as a conservation area is neither legally necessary to permit the Commission to assess any proposed project of state significance nor is it consistent with the purposes of the establishment of the Ralphs Bay conservation area.

Mr Kerr SC concluded that:

there [was] no demonstrated need for the provisions of the Ralphs Bay (Clarification) Bill 2006 as currently drafted. There are substantial reasons of legal principle to object to it.³⁴

This advice, and a comprehensive briefing package, was provided to all members of the Legislative Council prior to their debate in respect of the Bill. The Legislative Council ultimately reached a compromise position, voting to amend the Bill to provide that the Ralphs Bay Conservation Area would comprise approximately 171ha (almost double the area previously reserved), excluding any area that the Commission assessed as 'necessary or convenient' for the canal estate if it was approved.³⁵

In its submission to the Joint Parliamentary Select Committee on Ethical Conduct, SRB stated:

... this whole episode represents the misuse by a Government of its powers, in order to give preferential treatment to a developer proposing a highly unpopular conversion of Crown land into a particularly

²⁹ The uncertainty arose because the original Ralphs Bay Coastal Reserve extended to low water mark. When the reserve was renamed under the Regional Forest Agreement (Land Classification) Act 1998 (Tas), the new registered plan showed the Ralphs Bay Conservation Area surrounded by a heavy black line described as "low water mark". However, the position of the line was more consistent with the location of the high water mark.

³⁰ Judy Jackson media release, 4 July 2005.

³¹ Tasmanian Parliament, *Hansard*, 6 July 2006 available at <www.parliament.tas.gov.au/HansardHouse>

³² Ralphs Bay Conservation Area (Clarification) Bill 2006, viewed 8 September 2010, <http://www.parliament.tas.gov.au/bills/Bills2006/pdf/26_of_2006.pdf>

³³ Tasmanian Parliament, *Hansard*, 31 August 2006, 7:30pm available at <www.parliament.tas.gov.au/HansardHouse>. Minister Llewellyn confirmed that "In subsequent legal advice, however, the Solicitor-General has indicated that the conservation area would more likely than not extend to the actual 'low water mark' in Ralphs Bay, if it were the subject of litigation".

³⁴ Duncan Kerr SC, MHR, *Opinion*, viewed 8 September 2010, <<http://www.severalphsbay.org/pdf/KerrSRBopinion.pdf>>

³⁵ *Ralphs Bay Conservation Area (Clarification) Act 2006*, s.3 and Schedule 1

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environmentally destructive style of property development, in defiance of the expressed wishes of the Tasmanian people.³⁶

The formal assessment of Lauderdale Quay

When the Premier announced that the Lauderdale Quay proposal was to be re-submitted, he advised Parliament that Walker Corporation had requested that the proposal be a PoSS and he intended to recommend that approach to the Governor. Mr Lennon considered that the project was of state significance on the basis of its capital investment, economic and environmental impacts, infrastructure requirements and technical complexity.³⁷

Mr Lennon also advised that, if the proposal was recommended for approval, the government would sell the land to Walker Corporation at a price fixed by the Valuer-General (later estimated to be \$600 000).³⁸

Following a heated parliamentary debate, the Lauderdale Quay project was declared a PoSS in September 2006. The proposal was also determined to be a controlled action under the EPBC Act on the basis of its potential impacts on threatened species, migratory bird species and the values of a nearby Ramsar wetland. The Federal Environment Minister, Senator the Hon Ian Campbell, accredited the PoSS process and directed the Commission to assess the impacts on the identified matters of national environmental significance as part of the integrated assessment.³⁹

Gathering momentum: getting the team together

Recognising that a qualified assessment of the proposal was essential to present a compelling legal case, SRB began to gather support and increased its fundraising efforts. The group engaged the Environmental Defenders Office (EDO) to manage the legal proceedings and Roland Browne to act as counsel.

SRB had been building relationships with experts in a range of disciplines since 2004. The legal team identified relevant issues and began to liaise with experts able to assist with the assessment process. Many of those approached generously agreed to some level of involvement, from providing relevant studies, to reviewing the draft Integrated Impact Statement (DIIS) and providing general comments, to appearing as an expert witness. Our stable of specialists included a leading expert on saltmarsh, a senior hydrologist with experience regulating canal estates in Western Australia, a former lead scientist with the Derwent Estuary Programme, a preminent Tasmanian architect and a marine ecologist who had recently assessed a significant dredging project in Victoria.

The hard work begins: release of the Draft Integrated Impact Statement

In February 2009, the almost 7 000 page DIIS was released for public comment. SRB's early organisation meant that we were able to mobilise our experts quickly to meet the tight 6-week timeframe. Some of the significant issues identified in our submission included:

- inadequate assessment of the potential for remobilisation and bioaccumulation of mercury and other heavy metals. This was particularly relevant in light of the recognised 'Ralphs Bay conundrum'
- lack of analysis of the impact of destruction of the tidal flats on nutrient removal capacity and primary productivity
- failure to provide a strategic planning basis for the project or to demonstrate a need for reclamation where adequate reserves of urban land exist
- calculation of risks based on mean sea-level rise of 0.5m by 2100, rather than high-end predictions in line with more recent studies

36 Save Ralphs Bay submission to Joint Select Committee on Ethical Conduct 2008 viewed 8 September 2010, <http://www.parliament.tas.gov.au/ctee/old_ctees/Submissions/16A%20Save%20Ralphs%20Bay.pdf> f>

37 Tasmanian Parliament, *Hansard*, 6 July 2006 available at <www.parliament.tas.gov.au/HansardHouse>

38 Cardno, Draft Integrated Impact Statement for the Lauderdale Quay Proposal, 2009, at 325

39 On 22 December 2006, notice was published that the development was a controlled action. On 5 January 2007, the delegate of the Minister gave notice that the action would be assessed under the PoSS process pursuant to the Commonwealth – Tasmania Bilateral Agreement. Both notices are available at <www.environment.gov.au>

- failure to assess potential impacts of groundwater contamination by leachate from the former Lauderdale tip site⁴⁰
- lack of detail regarding proposed measures to offset loss of habitat
- lack of assessment of the capacity of the Pittwater – Orielton Ramsar wetland to accommodate birds displaced by the development or the impact of increased competition on the ecological character of the site
- deficiencies in the net benefit analysis
- inadequate assessment of the potential impacts on the Spotted Handfish, and
- poor integration of the proposed development with existing road networks.

The Commission received 547 submissions in response to the DIIS, including from Clarence City Council (in whose municipality the development would be located), the Environment Protection Authority, and a ‘whole of government’ response. Less than 5% of the submissions supported the development. The Commission had also engaged an independent consultant, SKM, to carry out a peer-review of the DIIS against the Scope Guidelines and identify any areas of concern.⁴¹

Prioritising issues and preparing the evidence

While its response to the DIIS had covered a broad range of issues, SRB’s limited resources made it necessary to prioritise the issues for which detailed expert evidence would be presented. Delegating bird issues to Birds Tasmania and issues associated with climate change to the Tasmanian Greens, SRB engaged experts to provide evidence in relation to heavy metal contamination, acid sulphate soils, water quality, ecological impacts, planning, economic impacts, visual amenity and traffic issues.

The State government agencies did not submit formal proofs of evidence. Instead, they relied on their initial submission and indicated that the authors of relevant sections of the submission would be available for questioning. Clarence City Council submitted proofs of evidence to support its concerns regarding engineering issues, sea level rise, traffic and ongoing management responsibility for the site.

The Commission also invited a range of community representors to attend the hearing to expand on the concerns set out in their representations.

Into the trenches: the hearing

The hearings commenced in the imposing Federal Court building on 17 June 2009, with considerable media interest and a large audience.

At the outset, Walker Corporation submitted a draft permit with numerous proposed conditions which it frequently referred to when addressing concerns raised during the hearing. The Commission declined to publish the draft permit on its website to avoid any implication that approval of the project was a foregone conclusion.

The hearings were long and arduous – experts were called and recalled (some by video link), issues were canvassed, methodologies were tested and new information was provided. The Commission made an early ruling that only parties with legal representation were able to ask questions of witnesses, and directed several members of the public to raise issues through Roland Browne. This placed a significant burden on SRB to provide quasi-representation for the entire community opposition. The government agencies did not undertake any cross-examination, and counsel for the Council attended only on days where its own experts were appearing. Despite many issues being raised in the government submissions, it is likely that many of these concerns would not have been pursued in detail at the hearing without SRB’s daily involvement.

Numerous changes were made to the proposal throughout the hearing, often with little notice to the other parties. For example, on the first day of the hearing Walker Corporation announced that it would no longer use contaminated

⁴⁰ SRB successfully obtained a summons for all EPA documentation in relation to the tip, which revealed concerns that the uncapped tip could pose threats to groundwater if inundated.

⁴¹ The submissions and the peer-review report are available at <www.planning.tas.gov.au>

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sediment dredged from the navigation channel to construct the bund wall (a proposal which had been strongly criticised by SRB and the State Government). Instead, contaminated sediments would be separately dredged, isolated and treated in a series of secure containment areas and disposed of in specified land masses.⁴² No detailed plans of the new containment areas or treatment methods were provided. Walker Corporation's experts also conceded that more rigorous testing was required to identify the extent of contaminated sediment and conducted negotiations with the State government throughout the hearing in an effort to agree on a testing regime.

Significant changes such as this made it difficult to assess the likely impacts of the proposal. Many late night or last minute conferences were held with our witnesses to determine how to respond to a new proposal or new evidence presented by Walker Corporation.

The hearings concluded on 17 July 2009. SRB's closing statement reviewed all the relevant evidence and urged the Panel to conclude that the proposed canal estate was inappropriate, unsuitable and a threat to both Ralphs Bay and to Tasmania's 'clean, green' image.⁴³

The first hint of victory

After an anxious wait, in late October 2009 the Commission released its Draft Impact Assessment Report (DIAR).⁴⁴ To our delight, the Commission's draft recommendations were strongly against the proposal. In particular, the DIAR concluded:

- economic benefits from the proposal were overwhelmingly outweighed by ecological and social considerations
- sustainability was a 'fundamental consideration' and the Panel considered that the proposed canal estate was 'an inherently unsustainable approach to satisfying demand for residential land'
- despite being well designed and engineered, the proposal would be a 'major and unacceptable intervention into Ralphs Bay'
- the proposal would have unacceptable impacts on the Red-necked Stint and Pied Oystercatcher. The Panel was not satisfied that proposed measures to offset habitat losses would be effective to any substantial degree
- a cautious approach was warranted given the significant uncertainty that remained regarding the 'Ralphs Bay conundrum', flushing and sedimentation and the impact on the Spotted Handfish
- the Panel was not satisfied that the permit conditions proposed by Walker Corporation, nor any other conditions, would resolve the issues for which it was recommending refusal.

The DIAR also recommended that the proposal be refused under the EPBC Act by reason of the potential impacts on the Red-necked Stint, Spotted Handfish and the Pittwater-Orielton Ramsar wetland.⁴⁵

In response to the DIAR 120 submissions were lodged; the vast majority in support of the Panel's recommendations. While several experts for Walker Corporation responded to the Panel's findings in respect of their evidence, Walker Corporation requested an extension of time to allow its experts to review the hearing tapes.

After protracted negotiations, Walker Corporation made a submission to the Commission on 26 March 2010. The submission made a series of complaints regarding the process, the independence of the Panel and the inappropriate weight given to 'non-expert' evidence. The submission identified a few specific errors but otherwise simply requested that the Commission hold a further hearing 'so that the numerous issues arising from [Walker's] review can be fully and carefully canvassed'.⁴⁶

⁴² Evidence of Anthony Howard of Cardno, 17 June 2009

⁴³ Closing submissions from all parties are available at <www.planning.tas.gov.au>

⁴⁴ Tasmanian Planning Commission, *Draft Impact Assessment Report – Lauderdale Quay Development Proposal*, 2009, available at <www.planning.tas.gov.au>

⁴⁵ DIAR, at 4

⁴⁶ Letter from Tim Carrigg to the Commission, 26 March 2010, available at <www.planning.tas.gov.au>

SRB opposed further hearings and argued that the Panel already had sufficient information to finalise its assessment, including the DIIS, the evidence presented at the hearings and the various submissions made in response to the DIAR.

The final decision

On 22 June 2010, the Commission publicly released its Final Impact Assessment Report, confirming its recommendation that the Lauderdale Quay project not proceed under either the *State Policies and Projects Act* 1993 or the EPBC Act.⁴⁷

The Premier announced on 22 June 2010 that he intended to follow the Commission's recommendation.⁴⁸ On 26 July 2010, the Governor formally made an order that the project not proceed.⁴⁹

Conclusions

From 2004 to 2010, SRB, in partnership with Birds Tasmania and the EDO, took the lead in creating a strong community and political consensus that:

- Ralphs Bay was valued as a Conservation Area
- the sale of Crown Land to a developer for a damaging style of development was inappropriate
- the natural values of Ralphs Bay should be protected and appreciated, and
- the will of the community should be heard and respected.

Fortunately, on this occasion the institutions and processes of governance worked, and a rigorous, independent assessment by the Commission resulted in the comprehensive rejection of the proposal.

In addition, the Commission's rejection of the proposal has meant that no area is excluded from the Ralphs Bay Conservation Area, which now extends across 171ha, nearly twice the area originally protected. On the basis of the Commission's assessment that the Lauderdale sandflats meet the criteria for Ramsar listing⁵⁰, SRB and Birds Tasmania will also seek annexation of the Ralphs Bay Conservation Area to the Pittwater Orielton Lagoon Ramsar wetland. There are encouraging noises from within the Tasmanian Government that this request will be viewed favourably.

Premier Bartlett has also given a clear undertaking that he will introduce legislation banning canal estates in Tasmania. It is a considerable victory for all those who have campaigned against the canal estate proposal in Ralphs Bay that other communities in Tasmania will also be spared from such battles in future.

⁴⁷ Tasmanian Planning Commission. 2010. *Final Impact Assessment Report – Lauderdale Quay Development Proposal*, available at <www.planning.tas.gov.au>

⁴⁸ Tasmanian Parliament, *Legislative Assembly Hansard*, 22 June 2010

⁴⁹ Notice published in the *Tasmanian Government Gazette*, 4 August 2010, at 1338

⁵⁰ Tasmanian Planning Commission, *Final Impact Assessment Report - Lauderdale Quay Development Proposal*, 2010, at 206, available at <www.planning.tas.gov.au>