David Metcalf
General Manager
Glamorgan Spring Bay Council
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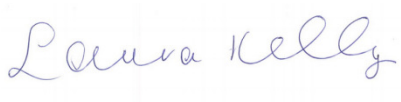
28 June 2017

Re: DRAFT PLANNING SCHEME AMENDMENT 2017/01 & DRAFT PERMIT DA 2017/00097

Dear Mr Metcalf,

Please find below Environment Tasmania's representation with regards to Draft Planning Scheme Amendments 2017 / 01 + DA 2017/00097.

Sincerely,



Laura Kelly.
Strategy Director,
Environment Tasmania.

Objection to rezoning of Environmental Management zone: Endangered species

Environment Tasmania strongly objects to the proposed rezoning of Environmental Management Zone to Light Industrial. Current zoning recognizes that the area is calving habitat for the EPBC-listed, endangered Southern Right Whale. Any rezoning to Light Industrial would undermine protection of the species. The proposed rezoning would also conflict with the following statement in the **Southern Tasmanian Land Use Strategy (STRLUS)**:

- "*A pro-active planning approach to the protection of biodiversity values, habitat, and native vegetation is needed. This will only occur if known natural values such as threatened vegetation communities, threatened species sites and habitat, EPBC listed ecological communities and biodiversity vegetation corridors are taken into account in the planning of urban growth and land use zoning*."

Further, the **Triabunna / Orford Structure Plan 2014** (Structure Plan) commits to:

- *"Protect the habitats of threatened fauna and non-threatened fauna of conservation significance."*

And Resource Utilisation Policies include a commitment to:

- *Ensure that the location, design and operation of onshore aquaculture activities and the onshore components of fishing and aquaculture activities have regard to the surrounding environment.*
- *Avoid unnecessary disturbance to coastal environments to facilitate onshore aquaculture activities.*

Environment Tasmania asserts that the proposed rezoning of an Environment Management Zone into a Light Industrial Zone with a Variance for aquaculture uses fails to meet the criteria of either the STRLUS or the Structure Plan with regards to taking a proactive approach to protecting habitat for protected species or ensuring the placement of aquaculture has regard to the surrounding environment.

A juvenile humpback caught in an anchor line at one of Marine Harvest's aquaculture facilities in B.C. in 2016. In Tasmania, there are records of a large whale colliding with the side of a salmon cage (Pemberton et al. 1991), probably after becoming entangled in anchoring lines.

Allowing rezoning with a variation for aquaculture use directly conflicts with priorities identified in the Commonwealth Government's Conservation Management Plan for Southern Right Whales, which is to re-establish numbers in traditional breeding grounds on Tasmania's east coast. The proposed use identified in the rezoning and DA will allow for actions which are all described as major threats to the species in the Commonwealth Conservation Management Plan, including dredging, habitat modification, noise interference, vessel disturbance and entanglement.

Entanglement - Entanglement can harm or kill individual whales, and can reduce the fitness of an individual by restricting mobility and impairing breathing, swimming or feeding ability. Entanglement causes physical damage, e.g. nets and lines cutting through the skin and blubber thus exposing the animal to infection and amputation or death. Entanglements in Australian waters primarily come from commercial fishery equipment and marine debris.

Habitat modification - through the development of infrastructure such as ports, marinas, aquaculture facilities, and ocean/marine energy production facilities could lead to the physical displacement of southern right whales from their preferred habitats or disruption to normal behavior.

Vessel Disturbance - Vessel disturbance can occur in the form of collisions or by disrupting the behaviour of animals. Southern right whales appear to be the primary whale species involved in vessel collisions in the southern hemisphere.

Noise Interference - Loud noises or long exposure may lead to avoidance of important habitat areas, interruption to communication and, in some situations, physical damage, including permanent or temporary hearing loss. Potential forms of harmful noise interference in Australian waters include seismic surveys, other industrial activities such as

drilling, pile driving, blasting and dredging, defence activities, vessel noise, and aircraft operating at low altitude.

The Commonwealth Government review of the 2005–2010 Recovery Plan for the Southern Right Whale found that objectives of the 2005–2010 Recovery Plan were not achieved in relation to expansion of southern right whales into suitable habitat. Occupancy of coastal habitats remains severely restricted in comparison to the areas occupied historically, particularly in south-east Australia.

Given these threats to the species, Environment Tasmania recommends that the existing Environmental Management Zone is maintained with no variation to allow for aquaculture infrastructure development and operations.

Concerns with the Marine Solutions Report

The All Urban Planning report states "No threatened species were observed during field surveys." It fails to state that the Marine Solutions field survey was conducted in **September**. The seasonal occurrence of the species in the area shows that most whales are observed **between June and August**. It is completely inappropriate to conduct field surveys for a migratory species outside of its seasonal occurrence.

The Marine Solutions Report also states that seals and dolphins were spotted during field surveys, but fails to identify the species of seals and dolphins. Without information on the species recorded, it is impossible to conclude that no protected species of seals and dolphins will be impacted by the rezoning and development.

The Marine Solutions report fails to consider the noise impacts from marine dredging and jetty construction on marine mammals and other sensitive fauna. It is impossible to determine likely impacts of the rezoning and development when no noise modelling has been presented. Pile driving and dredging is recognized by the Commonwealth Government as a harmful noise interference that threatens the Southern Right Whale. Failure to model these impacts in calving habitat for the species is a fatal omission within the application and raises questions as to its compliance with Commonwealth laws seeking to protect the endangered species. The Marine Solutions Report also fails to consider the impacts of ongoing noise interference resulting from maintenance dredging and increased vessel movements.

Based on these considerations, the application for rezoning should be rejected as it fails to address or mitigate the threats to values that are currently protected by environmental management zoning.

Objection to rezoning of Environmental Management Zone and Open Space/Public Reserve: Use Conflict

Environment Tasmania contests the applicants assertions that the proposed rezoning is given strategic justification through the STRLUS. The applicant notes that the STRLUS allows for support for the aquaculture industry in strategic locations. The applicant fails to note other policies within the STRLUS which make clear that the proposed location is not a strategic location for infrastructure for an industrial aquaculture development. These are clauses committing to both biodiversity preservation and the protection of distinctive local

features for tourism uses. Applicable clauses within the STRLUS which support the maintenance of the current zoning of the area are:

- *WR 2: Manage wetlands and waterways for their water quality, scenic, biodiversity, tourism and recreational values.*

- *WR 2.2: Provide public access along waterways via tracks and trails where land tenure allows, where there is management capacity and where impacts on biodiversity, native vegetation and geology can be kept to acceptable levels.*

- *T 1: Provide for innovative and sustainable tourism for the region T 1.1 Protect and enhance authentic and distinctive local features and landscapes throughout the region.*

- *T 1.2: Identify and protect regional landscapes, which contribute to the region's sense of place, through planning schemes.*

Conflict of the proposed use with existing zoning is recognized in clause PR4.2 relating to aquaculture:

- *PR 4.2: Identify key marine farming areas within planning scheme to assist in reducing potential land use conflicts from an increasingly industrialised industry.*

Environment Tasmania submits that the applicant has failed to identify an area within the planning scheme which can be used for marine farming without increasing land use conflicts.

In an attempt to reconcile conflict with tourism uses, the applicant raises the following comments from the Tasmanian Planning Commission in relation to the re-development of the former Spring Bay mill through a Particular Purpose Zone.

- *"The adjoining industrially zoned land includes fish processing activities and the planning scheme includes a buffer area for their protection. The buffer will remain to manage potential land use conflicts at the zone boundary. The buffer extends minimally into the subject site and the proposed Spring Bay Zone provisions respond by including a requirement for a greater setback. The Panel considers that potential land use conflicts are adequately addressed."*

It is important to note that this comment refers to uses on industrial zoned land where fish processing already occurs. It in no way relates to the extension of industrially zoned land and fish processing activities towards the Spring Bay Zone, as proposed by the applicant. The Commission's decision clearly relates to the continuation of existing industrial activities, not any further expansion of those activities. To suggest that land use conflicts are adequately addressed by the existing buffer despite the fact that proposal includes an extension of industrial use towards the Spring Bay Zone, fails to adequately acknowledge or mitigate the increased land use conflict that will result from the proposed rezoning.

Both the State Coastal Policy and the Southern Tasmania Industrial Land Use Strategy emphasise the importance of making use of current zoned land rather than opening up new industrial areas. The rezoning application contains no scoping of the potential to use other current industrial zoned land and existing wharf facilities in the region to support the

development, rather than opening up new industrial areas in land and water that already has value for tourism, conservation and the community.

We note that this submission is supported by the finding of the Tasmanian Planning Commission at p5 of its decision on the amendment for the Spring Bay Zone (AM 01/14):

- *"The Southern Tasmanian Industrial Land Strategy (STILS) 2013 forms part of the broader STRLUS, which guides the development and zoning of industrial land in the southern region. By its nature the document is high level, giving an overall assessment of industrial land within the region, including identifying where there is a shortfall of zoned land or any specific type of industrial land.*

In relation to Triabunna the Stage 2 report states that *"there appears to be an oversupply of industrial land in the area with sufficient industrial land remaining vacant" (p10).*

The Panel is persuaded that there is an excess of industrial land in the Triabunna area, and supports rezoning of the subject site from Industrial [to zoning that supports tourism, visitor accommodation, educational, cultural and associated uses]."

While Council has noted in its assessment of the proposed development that there are no vacant industrial sites with access to the foreshore, this fails to take into account that the present Spring Bay Seafoods' site is already serviced by a wharf, and no reason has been provided as to why it may not be upgraded to service the proposed new marine farming shore facility.

Objection to use variation to Light Industrial Zoning Use Table to allow aquaculture

Environment Tasmania contests the applicant's statement that it is "rather surprising" that the Light Industrial Use Table does not allow for aquaculture. The reason for this can be found in the definition of uses for the zone, being that "off-site impacts are minimal or can be managed to minimize conflict or impact on the amenity of other users."

The offsite impacts of aquaculture, in terms of smell, noise, waste emissions and disruption to amenity for other users, are not minimal. Industrial salmon farming cannot be compared to the muscle farming currently occurring at the site – the footprint of the operation of a high-intensity salmon farm are very different to that of a muscle farm. The community conflict surrounding this application for rezoning are testament to this.

Environment Tasmania asserts that the Use Table in relation to Light Industrial is appropriate and no variation should be granted to allow for intensive aquaculture uses on the sire.

Failure to consult on all uses allowed by Resource Development Permit

Arguably, the proposed creation of a 'Spring Bay Light Industrial Area Plan' will make further resource development and resource processing for aquaculture and fish processing – such as a fish processing facility for example, "permitted" use classes. This proposed amendment could make any future proposals by the applicant to intensify its onshore facilities not subject to further public comment, provided the development complies with the use and development standards of the Light Industrial Zone and relevant Codes. Clearly this is

unlikely to accord with community expectations about such intensive uses and does not accord with the purpose of the Light Industrial Zone of the *Glamorgan Spring Bay Interim Planning Scheme 2015* which is:

- "*To provide for the manufacturing, processing, repair, storage and distribution of goods and materials where off-site impacts are minimal or can be managed to minimise conflict or impact on the amenity of other users*."

We submit that the existing applicable requirements for the Light Industrial Zone, which are to apply to developments in the proposed Specific Area Plan Overlay, are not sufficient to mitigate the possible impacts of future expansions to the marine farming shore facility and wharf or fish processing to surrounding land (& sea) users. In fact, there has been no assessment of the potential impacts of Resource Processing (fish processing) to the land described as CT6464/2, such that it should be a "permitted" use on this site. Indeed, up to 100 tonnes of fish processing may be allowed within the Specific Area Plan Overlay before any further permits or assessment is required (thereafter such activities may be Level 2 activities under the *Environmental Management and Pollution Control Act 1994*). Given the history of community complaints, particularly relating to the noise and odours emanating from such facilities, we strongly submit that it is inappropriate that they be permitted within the area.

Objection to proposed development permit

Failure to model impacts of groyne on water flow

Concern with regard to the rock groyne and coastal geomorphological processes –

- a 59 metre long groyne is proposed adjacent to Paddys Point Beach, but no comprehensive geomorphological assessment has been undertaken.
- Marine impacts and hydrodynamic surveys need to be investigated taking into consideration the potential change of sand and water movement due to the proposed groyne.

Failure to comply with Waterway and Coastal Protection Area code.

- Fails to demonstrate how works will mitigate impact on natural values and coastal processes – impacts of groyne on waterflow and erosion of adjacent beach hasn't been modelled.
- Fails to satisfy conditions on dredging and reclamation – no evidence that impacts of groyne won't increase risk of inundation, including sand movement and wave action
- Failure to consider impact of maintenance dredging on resuspension of toxic dinoflagellate
- Regarding the development's compliance with performance criteria P1 of cl. E11.7.1 of the *Glamorgan Spring Bay Interim Planning Scheme 2015* we make the following observations:

Building and works within a Waterway and Coastal Protection Area must satisfy all of the following:

(a) avoid or mitigate impact on natural values;

- It has not been demonstrated that the proposed development will avoid or mitigate impact on natural values. The Marine Solutions Report fails to address the threats to Southern Right Whales or the impacts of clearing threatened vegetation on the Critically Endangered Swift Parrot.

(b) mitigate and manage adverse erosion, sedimentation and runoff impacts on natural values;

- The proposed development provide no protection against sedimentation and runoff impacts relating to the cleaning of salmon pens and nets in the pen assembly area, where runoff and bio foul material could easily flow into the sea.

(c) avoid or mitigate impacts on riparian or littoral vegetation;

- No assessment has been made of the extent of destruction of seagrass beds that will result from the development and ongoing use of the wharf & jetty. We note that the combined impacts of dredging, boat and pen movements over the seagrass may cause irreversible damage to the seagrass and other aquatic flora in the area.

(d) maintain natural streambank and streambed condition, (where it exists); (e) maintain in-stream natural habitat, such as fallen logs, bank overhangs, rocks and trailing vegetation; & (f) avoid significantly impeding natural flow and drainage;

- See comments below in relation to P1 of cl. E11.7.2 in relation to coastal processes.

- Regarding the development's compliance with performance criteria P1 of cl. E11.7.2 of the *Glamorgan Spring Bay Interim Planning Scheme 2015* we make the following observations:

Buildings and works must satisfy all of the following:

(a) need for a coastal location is demonstrated;

- The present Spring Bay Seafoods site is already serviced by a wharf, and no reason has been provided as to why it may not be upgraded to service the proposed new marine farming shore facility.

(c) native vegetation is retained, replaced or re-established so that overall impact on native vegetation is negligible;

- The development does not meet this criterion as it involves the clearing of at least 0.95Ha of native vegetation and no proposal to revegetate areas or offset the clearing.

- Furthermore, no assessment has been made of the extent of destruction of seagrass beds that will result from the development and ongoing use of the wharf & jetty. We note that the combined impacts of dredging, boat and pen movements over the seagrass may cause irreversible damage to the seagrass and other aquatic flora in the area.

(d) building design responds to the particular size, shape, contours or slope of the land and minimises the extent of cut and fill;

- The development does not meet this criterion as it involves the deposit of approximately 4700 cubic metres of spoil from dredging, some of which may be contaminated over EPA trigger levels for arsenic, in a Coastal Inundation Hazard Area.

(e) impacts to coastal processes, including sand movement and wave action, are minimised and any potential impacts are mitigated so that there are no significant long-term impacts

- The applicant has not provided a complete assessment of the impacts of the development on coastal processes, as both the Marine Environment Assessment by Marine Solutions and the Coastal Impact Assessment by Burbury Consulting have failed to address the effects of the rock groyne on coastal processes and natural values.

- It would appear that modelling has only been conducted by Burbury Consulting on the impacts of the piled structures of jetty and wharf on wave action. Even then, there is no statement of the type of modelling used to assess the impacts of these piled structures, nor the assumptions used to inform the model. There is further no explanation given as to why no modelling or assessment of the impacts of the rock groyne on coastal processes has been undertaken.

- The applicant provides no assessment of the impacts of any of the wharf or jetty structures on the sand movements in the area, and it is unclear whether reliance can be placed on wave action alone to determine these impacts (currents and geomorphology would play a significant role in the movement of sand).

- The Burbury Consulting Report provides no information such as details of any modelling has been carried out to support the conclusion in the Coastal Impact Assessment that the impacts of the dredging (being 5% of the total bay area) will have not affect wave actions or surrounding coastal processes.

- Given that it is acknowledged maintenance dredging will be required to remove sand that builds up in the dredge area, there can be no assurance that the source of this sand will not be sand eroded from the nearby beach without a detailed assessment and modelling being carried out. If maintenance dredging is required over the life of the jetty and wharf, the amount of material removed from the bay could be locally significant and result in long –term impacts on the area such as the erosion of the nearby beach.

- In relation to the compliance of the development with performance criteria P2 of cl E11.7.2, we make the following observations:

Dredging or reclamation must satisfy all of the following:

(a) be necessary to establish a new or expanded use or development or continue an existing use or development;

- The necessity for dredging has not been demonstrated by any of the application material. No details are provided about size or required depths for the vessels intended to be used by the applicant or whether there are any appropriate alternatives. Further there is no scoping of alternative locations for the wharf or onshore facilities provided in any of the documents.

(b) impacts on coastal processes that may lead to increased risk of inundation, including sand movement and wave action, are minimised and potential impacts are mitigated so that there are no significant long-term impacts;

We reiterate our comments above for P1(d) &(e) of cl E11.7.2 and note that the Burbury Report provided no basis for the conclusions reached in relation to this criterion.

Concerns with regard to proposed dredging:

- The Marine Solutions "Environmental Impact Assessment for a proposed Jetty at Spring Bay Triabunna" states at 7.3 that "The seabed consists of silt and fine and course sand, and therefore is prone to resuspension upon disturbance. Therefore minimizing sediment disturbance is critical to risk mitigation. In addition, re-suspension of sediments, regardless of contaminant loads (which were found to be low) can be associated with adverse changes to the functioning of biota, water chemistry and temperature, along with smothering of habitat and the reduction in photosynthesis."
  However, the Dredge Management Plan does not indicate the amount of suspension/and re-suspension of sediment likely to result from the proposed dredging and the likely impact of this on surrounding marine flora and fauna, and in particular on the seagrass noted to dominate the seafloor between 15 to 50 metres from shore. Therefore the assessments of the likely environmental impacts of this project by the applicant and Council were incomplete.
- The Dredge Management Plan gives no indication of the amount of maintenance dredging which will be required. There is no discussion of preferred methodology of maintenance dredging, or consideration of the impacts of maintenance dredging on sediment re-suspension and the surrounding marine flora and fauna.
- The Dredge Management Plan states that "Agitation or injection dredging techniques is not appropriate for the initial dredge at this site, as the spoil would be disturbed, but not removed from site, however it may be appropriate for any maintenance works." Considering the Marine Solutions report rates as high risk the mobilisation of toxic dinoflagellate cysts causing at toxic algal bloom, it is unclear why agitation dredging would be considered appropriate for maintenance dredging.
- We consider that specific conditions should be imposed concerning the methodology of any maintenance dredging and disposal location for the spoil.
- The Marine Solutions sampling of the sediments proposed to be dredge revealed levels of arsenic above EPA fill guideline levels (at p7).
- The Dredge Management Report fails to consider the potential impacts resulting from the placement of the dredge material (being potentially contaminated with arsenic above EPA threshold levels for fill) within the Coastal Inundation Hazard Area (i.e. the area may be inundated in the future). In these circumstances, we question whether any approval should be given to the use of dredge material as fill for the pen construction area.

Concerns with regard to the Natural Values Assessment by North Barker

- The North Barker Report indicates that 0.95 Ha of vegetation listed as threatened under the *Nature Conservation Act 2002* will be cleared. This vegetation has the potential to be swift parrot habitat.
    - The Tasmanian Threatened Fauna Handbook (p245) recommends that in order to protect the swift parrot that private landholders "*[p]revent the clearing of mature blue gum or black gum either in large or small stands or even single trees. If clearing is necessary then light selective logging is preferred. If clearing in the core breeding range then aim to protect all grassy blue gum forest and black gum forest (where blue gum or black gum regrowth and mature stems comprise 50% or more of the total stems in the forest patch*)."
    - The Handbook further recommends that landholders retain at least 30-50 per cent of Eucalyptus globulus forest as mixed-age trees as individuals and in clumps.
    - The National Recovery Plan for the Swift Parrot Lathamus discolor also suggests that where clearing occurs within foraging habitats on Tasmania's mainland (p29), "*… prescriptions should include the retention of all trees 60cm DBH [diameter at breast height] or greater, together with at least 5 trees per hectare from a mixture of other age classes (30-40cm, 40-50cm and 50-60cm DBH) to ensure continuity of food resources over time."*

For these reasons, we submit that there needs to be further detail about the specific vegetation to be cleared, and if clearing is to be authorised, conditions imposed to ensure that appropriate offsets for this vegetation cleared are provided through enduring Part V agreements.

Concerns with respect to noise impacts

Condition 11 of the draft permit issued by Council requires:

- "Use and development must be in accordance with recommendations (i) to (vi) inclusive of the noise impact assessment prepared by Environmental Dynamics dated 17 March 2017. Prior to the commencement of use the protocols required by recommendations (ii), (iii) and (iv) must be submitted to Council's General Manager."

We note that the noise impact assessment by Environmental dynamics does not contain recommendations numbered (i) to (vi), or have a recommendation numbered (iv).

In the circumstances, we consider that any permit issued should clearly articulate the noise limits for the activities and the time frames for the operation of the limits. These may be the limits set out for new industrial developments at a rural residence, as provided in Table 1 of the Environmental Dynamics report.

Further, there should be a strict hours of operation imposed of between 6am to 7pm on the site to ensure that neighbouring sensitive uses can be ensured that noise limits will be complied with.

The applicant also fails to model the impacts of noise interference of construction, maintenance and operations of the proposed development on endangered marine mammals. Failure to address this is fatal to the application to alter current environmental management zoning.