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## **Submission in Response to the draft Metropolitan Peel Sub-regional Planning Framework Document dated May 2015 (“the Document”)**

HOPP has only today become aware of the significance of the Document to future planning processes in regard to the proposed Mangles Bay Marina (MBM), and of today’s deadline for submissions.

On close inspection of the maps on page 17 and page 21, the Document shows the land subject to the MBM proposal as “urban expansion”. However it is noteworthy that at page 20, where specific areas of proposed urban expansion are listed, no mention is made of the MBM proposal land at Point Peron. Also, to add to the confusion and potentially mislead the reader, the map at page 45 shows the MBM land as “Open Space – Nature / Passive Recreation”.

The proposal to change the status of this land to “urban expansion” is in stark contrast to its current status as, for the most part, public open space comprising a portion of the ‘bush forever’ located in the Rockingham Lakes Regional Park. This is a fundamental change to a sub regional structure plan that the government (as the MBM development proponent) and the WA Planning Commission / Dept of Planning appear to be seeking to bring about by stealth.

To compound this failure of the Document to highlight and state unambiguously the proposed change for the benefit of readers, the WAPC and Dept of Planning have not taken reasonable steps to raise awareness about the significance of the Document to this issue, nor about today’s deadline. Consequently the public submission process is fatally flawed.

So far as we are aware, there have been no public forums held in the Rockingham area to help Rockingham people understand the significance of the Document to future planning processes for the highly controversial Mangles Bay Marina development proposal and no reasonable efforts have been made to draw the public's attention to the deadline for making submissions.

We understand, based on comments made today by Neil Fox, an officer at the Dept of Planning, that consultations about the Document have been held with 'big stakeholders' such as industry, the property sector, local government and others, but that no public forums have been held to his knowledge. Unfortunately it appears that the Dept of Planning does not regard the general public as a stakeholder of the same importance as these.

Nor has the City of Rockingham been proactive in this regard. A search of the City of Rockingham's website today reveals only one reference to the Document and the submission process, in relation to the Karnup District Structure Plan. No mention of it is made in regard to the Mangles Bay Marina. The only comment about the MBM is that "City of Rockingham Mayor, Barry Sammels today confirmed that preliminary work has commenced on the assessment of the Mangles Bay Marina Local Structure Plan". Questions about the MBM and the planning processes associated with it have been raised at numerous City of Rockingham Council meetings, the latest on 28 July 2015, however to the best of our knowledge neither the mayor nor other councillors nor staff present have ever referred to the Document and its significance for the future planning decision making regarding the MBM proposal land.

In view of advice received today from Mr Fox at the Dept of Planning that there have been consultations about the Document with the local governments affected, it appears that the City of Rockingham has either deliberately or negligently failed to inform the people of Rockingham about the Document and its significance to future planning decisions regarding the Mangles Bay Marina proposal. This, in conjunction with the WAPC / Dept of Planning's own failings in this regard, further reinforces the need for the WA government to take steps to facilitate a fresh process and period for public submissions after the public has been properly informed and after a fair and appropriate process has been established for this purpose.

Furthermore the proponent LandCorp and its so-called 'private sector partner' Cedar Woods have been conspicuously silent in relation to informing the public about the significance of the Document

and of submissions in relation to it. Only a few days ago they published<sup>1</sup> another large advertisement in the local papers which made no reference to it, instead giving the impression that the key planning processes and opportunities for public comment would occur later this year, after the City of Rockingham advertises the Local Structure Plan for the Mangles Bay Marina. This misleading (by omission) conduct, when taken with other aspects of the proponent's conduct that time does not permit to be detailed here, is all the more serious from an ethical point of view given that LandCorp is an arm of the government and would have been well aware of the significance of the Document for future planning decisions regarding the MBM proposal.

We understand, based on discussion with the Dept of Planning<sup>2</sup>, that there is no statutory framework or any other set of guidelines setting out the process by which the WAPC and the Dept of Planning considers and deals with submissions in relation to the Document, including whether there will be opportunities to make oral submissions and provide supplementary written submissions. This lack of a clear process and procedure is entirely unsatisfactory from the point of view of transparency, consistency of approach, procedural fairness and the avoidance of an apprehension of bias on the part of the WAPC and the Dept of Planning, referred to below.

Our concerns about the process are all the more serious because of the potential conflict of interest, perception of bias and probity issues that arise due to the fact that the WA Government is itself, through its land development arm LandCorp (aka the WA Land Authority) the lead proponent of the MBM development. LandCorp's role has occurred with express support and approval from the Premier and Cabinet<sup>3</sup>. LandCorp in turn has entered into a legally enforceable Development Agreement with private sector developer Cedar Woods<sup>4</sup>, under which Cedar Woods stands to gain a large profit from the subdivision and sale of the MBM proposal land for housing and other

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<sup>1</sup> Weekend Courier 24 July 2015 @ page 9

<sup>2</sup> per Neil Fox

<sup>3</sup> See Development Agreement between LandCorp, Cranford Pty Ltd, Cedar Woods Properties Limited and Cedar Woods Properties Management Pty Ltd dated 5 October 2011, which states (Background paragraph B) that "the Western Australian Cabinet has approved expenditure to progress Phase 2 which will involve undertaking statutory investigation and seeking necessary regulatory approvals and instructed LandCorp to report back to Cabinet at the end of that process." Refer also to comments made to the Legislative Assembly Estimates Committee by the Hon DT Redman, Minister for Lands, and by Mr F Marra, CEO of LandCorp, on 9 June 2015 (Hansard 9 June 2015 at pages E143-4)

<sup>4</sup> See Development Agreement between LandCorp, Cranford Pty Ltd, Cedar Woods Properties Limited and Cedar Woods Properties Management Pty Ltd dated 5 October 2011

purposes<sup>5</sup>. Furthermore, under this agreement<sup>6</sup> LandCorp has agreed with Cedar Woods to “produce Lots for sale as soon as possible”. This places the WAPC and the Dept of Planning in a position where they have a key regulatory and advisory role to play but are not at arm’s length from the developer, in a situation where the government is itself constrained by contractual arrangements already entered into by the government’s land development arm.

Furthermore, it is on the parliamentary record (Hansard 7 August 2013) that the WA Planning Commission contributed \$250 000 to fund the Cape Peron Tourist Precinct Steering Committee which was charged with coordinating the community consultation, due diligence, planning and environmental studies in relation the MBM proposal<sup>7</sup>. This means that the WAPC appears to itself have a preconceived view and vested interest in the MBM proposal being implemented, in addition to the “Caesar judging Caesar” factors already referred to above.

Furthermore, no basis has been set out in the Document for justifying this major change to the status and future use of the MBM proposal land. It appears that the WAPC / Dept of Planning has reached the view that it is a good idea for this land to be developed as “urban”, but has not provided its reasons for this view. This does not allow any fair and reasonable opportunity for the public to make submissions focused on the basis or reasoning upon which the WAPC / Dept of Planning considers the change has merit.

We understand that no duly diligent analysis has been carried out to compare the environmental, economic, social and cultural costs and benefits of (a) retaining the land as public open space capable of being integrated into a world-class coastal park covering Cape Peron and Lake Richmond with (b) the proposed MBM development, the nature of which is in flux and uncertain, as discussed below. In the current circumstances this failure is inexcusable and contrary to sound planning principles, and provides further evidence of the government’s failure to handle the matter diligently, objectively and even-handedly to date.

Proposing that the MBM proposal land be changed to “urban expansion”, in the absence of a diligent comparative analysis, is especially irresponsible in view of the fact that the MBM proposal

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<sup>5</sup> Said by the CEO of LandCorp to be “Depending on the revenue component of it...50 per cent of the revenue that can be generated” (Hansard 9 June 2015 at page E143)

<sup>6</sup> At paragraph 18.1

<sup>7</sup> Known at that time as the Cape Peron Tourist Precinct

land (and adjacent land) was transferred by the Commonwealth to the State on the basis that the future use of the land would be “restricted to a reserve for recreation and / or park lands”, with much of it since classified “Bush Forever” by the WA government and incorporated into the Rockingham Lakes Regional Park, and there is now an opportunity and well developed proposal to develop a world class coastal park that would bring in high economic, environmental, social and cultural returns to the region, the city and the state - an opportunity that would be forever lost if the MBM proposal goes ahead.

Furthermore we advise that on 8 May 2015 we sent a letter and series of questions to the Premier, copied to the Minister for Lands, the Treasurer and the Minister for Planning (among others) for their consideration. These questions focused on serious financial, economic and probity issues concerning the MBM proposal and the government’s handling of it, including its handling of planning issues. The Premier referred our correspondence to the Minister for Lands to answer. We have not received a substantive response from the Minister for Planning. To this date (nearly 3 months after our questions were sent) we have not received a response from the Premier, the Minister for Lands or any other minister to any of our questions and none of the addressees have referred us to the Document and today’s deadline. This further undermines the credibility of the state government’s accountability and public engagement processes in regard to the Document in so far as it relates to the MBM proposal land.

Finally, and very significantly, it appears that LandCorp and Cedar Woods have in mind a dramatic change to the proposal that they have promoted in the public arena. The centrepiece and rationale of the proposal has always been for an inland marina and canals on the site, with ancillary tourist attracting and residential development around it. Indeed, as mentioned above, it was at one stage called the “Cape Peron Tourist Precinct” and is still called the Mangles Bay **Marina** proposal (emphasis added). LandCorp and Cedar Woods obtained conditional environment approvals from the state and commonwealth on this basis<sup>8</sup> and have heavily marketed the proposal to the public on this basis<sup>9</sup>, well aware no doubt that they would have been unlikely to get any support for bulldozing and selling off for housing “bush forever” land in the regional park at Point Peron without the “carrot” of a marina which they claimed was “much needed” in the region. Importantly, they have never said publicly that this marina may not in fact be built due to lack of funding and they continue to rely on

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<sup>8</sup> Including stating in the proponent’s Public Environmental Review document that the construction of the marina would commence in the first stage of the development

<sup>9</sup> A plethora of marketing materials that demonstrate this can be provided if required.

the promise of a marina to garner support for the proposal, using expressions such as “the marina will...”

However, it is just starting to emerge, by deduction, that LandCorp and Cedar Woods are now seeking to obtain approval to develop and sell off lots for housing and other purposes without the marina and without any guarantee that the marina will ever be built. The state government has made it clear it will not fund the construction of the marina and that the development must be self-funded from the sale of lots<sup>10</sup>. Given the extremely high costs and risks associated with the “wet construction method” that would apply to the marina and canals, this means it is looking very unlikely that LandCorp and Cedar Woods will ever have the money to build the marina. And even if they do manage to obtain sufficient finance in future, they would have no incentive to build the marina given that not building it would be far more profitable for them. To date this grave doubt about the proponent’s ability and commitment to build the marina is not known or understood by the general public. This means that the whole basis upon which the MBM proposal has been promoted and premised to date, including during the period of public submissions on the Document, now appears not to be true and correct, or at best unlikely to be true and correct. This taints and invalidates the public consultation process regarding the Document’s application to the MBM proposal land and in itself is sufficient reason why the process is fatally flawed and needs to be revamped and entered into afresh, based on proper public disclosure and sound planning principles.<sup>11</sup>

The above factors in combination lead to a reasonable apprehension of bias on the part of the WAPC and the Dept of Planning in this process. Our organization, and we suggest the public in general, can have no confidence that the WAPC will apply acceptable standards of objectivity, open mindedness, even handedness and procedural fairness in dealing with the matter.

Time does not permit us to comment here about the substance of the proposal to change the classification of the MBM proposal land to “urban expansion”. Furthermore, our concerns about the

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<sup>10</sup> Refer Comments of Mr Marra at page E143 of Hansard, 9 June 2015

<sup>11</sup> Should the government, including the WAPC / Dept of Planning, fail to ensure proper public disclosure of the true intentions for the MBM proposal land and put in place diligent “arm’s length” evaluation and planning processes it may well become complicit in what may amount to a major land “scam” in regard to the MBM proposal land, and the sabotage of the wonderful opportunity to create a world class coastal park at Cape Peron, with all the benefits that would bring.

serious flaws in the process outlined above, including apprehension of bias, cause us to have severe reservations about whether it is even appropriate for us to do so at this point.

Suffice to say that we think the proposal is a very bad one, on planning grounds, and has not been justified. Furthermore it appears to be at odds with statements made at the beginning of the Document attributed to the Minister and the Chairman of the WAPC in regard to environmental and economic considerations.

We look forward to being able to elaborate on our concerns at the appropriate time and within an appropriate forum and framework. We request the opportunity to make oral submissions and supplementary written submissions in regard to this matter in due course.



Dawn Jecks

Hands Off Point Peron Inc