

**INQUIRY INTO INTEGRITY OF THE NSW
BIODIVERSITY OFFSETS SCHEME**

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Submission to: Integrity of the NSW Biodiversity Offsets Scheme - Portfolio Committee 7 – Chair Hon Ms Cate Faehrmann – referred 24 June 2021

Lynda Newnam May 2022

Case Study – Marine Biodiversity Offset Strategy for Kamay Ferry Wharves SSI-10049 – relevant terms of reference for this Inquiry:

the effectiveness of the scheme to halt or reverse the loss of biodiversity values, including threatened species and threatened habitat in New South Wales, the role of the Biodiversity Conservation Trust in administering the scheme and whether the Trust is subject to adequate transparency and oversight,

the use of offsets by the NSW Government for major projects and strategic approvals

<https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2822#tab-termsreference>



The project is described as a ‘replacement’ of ferry wharves at La Perouse (Randwick LGA) and Kurnell (Sutherland LGA). The proponent is Transport for NSW. The project is currently in Assessment showing on the NSW Planning website as ‘more information required’.

<https://www.planningportal.nsw.gov.au/major-projects/projects/kamay-ferry-wharves>

I am writing as a member of the public, resident at La Perouse. Community participation is encouraged under the NSW Environmental Planning and Assessment Act 1979. It takes many forms. However, I would note here that it has been difficult to navigate aspects of this DA as key information was not provided in the EIS. I have provided a brief overview based on information I could gather during and since the EIS exhibition. I have not made GIPA applications and have been restricted to information in the EIS, in submissions, in the

Response to Submissions, watching Budget Estimates and reading transcripts, correspondence and general research.

The project was on public exhibition 14th July to 11th August 2021 during the major COVID lockdown, when Randwick residents could not travel to adjoining Bayside LGA and vice versa. The EIS is around 4700 pages and only available to the public on their personal devices. Randwick offices and libraries were closed during the lockdown and there was, therefore, no access to hard copies. The Planning Department refused to extend the exhibition.

EPBC THREATENED SPECIES

The EPBC Referral is 2020/8825. The following extract attached to Version 3 of the SEARs deals with EPBC Listed Species and Places. This submission deals only with the former.

Matters of National Environmental Significance

There are likely to be significant impacts on the following controlling provisions: a. National Heritage Places (sections 15B and 15C); and b. Listed threatened species and communities (sections 18 and 18A). All matters of national environmental significance (MNES) protected under the triggered controlling provisions are potentially relevant, and it is the responsibility of the proponent to ensure any protected matters under these controlling provisions are assessed for the Commonwealth decision-maker's consideration. Based on the referral documentation, the Department considers that there is likely to be a significant impact on the following matters: • Posidonia australis Seagrass Meadows of the Manning-Hawkesbury Ecoregion endangered. • Black Rock-cod (Epinephelus damemellii) – vulnerable. • Cauliflower Soft Coral (Dendronephthya australis) – endangered • White's Seahorse (Hippocampus whitei) – endangered. • The listed National Heritage values of the Kurnell Peninsula Headland National place.

<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSI-10049%2120210504T064528.843%20GMT>

NSW Fisheries are responsible for the EPBC species listed. Though they could not formally object in their submission as this is SSI, they did not support the proponent's DA

<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=PAE-24087351%2120210810T041929.198%20GMT>

Extract:

DPI Fisheries are currently unable to support this proposal.

This due to: • A lack of information about the type (hull shape, draft and propulsion mechanism) and frequency of ferry services and type of recreational vessel usage, consequently the final impact of this proposal is unable to be quantified. • The

proponent has not yet demonstrated how offset requirements under the Fisheries Management Act (1994) or the Commonwealth Environmental Biodiversity Conservation Act (1999) will be met. The Marine Biodiversity Offset Strategy is incomplete. • It is not stated if any supplementary moorings (recreational or commercial) or dredging is proposed as part of construction or operation. These activities have a profound and longlasting effect on seagrass.

• Navigation channels and exact vessel pathways are yet to be disclosed. • At the consistency review DPI Fisheries found that a threatened aquatic species assessment (Part 7A Fisheries Management Act, 1994) to address whether there are likely to be any significant impact on listed threatened species, populations or ecological communities under the Fisheries Management Act, 1994 (Key Issue SEARs requirement: Section 2 Biodiversity, Point 7 (a)) had not been undertaken. While this Key Issue SEARs requirement has been undertaken the determinisation has not been included. Appendix H Section 5.4.2 is missing a sentence that identifies that there will be a significant impact to Posidonia australis as part of the 7 Part test of significance. This is the corner stone of the environmental assessment process.

In the Response to Submissions from Transport for NSW the Marine Biodiversity Offset Strategy (MBOS) dated October 2021 was included.

<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=EXH-22051261%2120211020T044854.815%20GMT> The public, including experienced divers were excluded from commenting because it was outside the exhibition period. This is an example of the work of one of the more experienced divers in Botany Bay, particularly around La Perouse and Kurnell <https://www.michaelmcfadyenscuba.info/> and others quoted here: <https://www.theleader.com.au/story/5904039/photos-hidden-treasure-in-botany-bay/>

There are 3 authors listed on the MBOS, including

is the head of Operation Posidonia <https://www.operationposidonia.com/>

From the MBOS:

The EIS concluded in identifying the need to offset the following impacts: • Posidonia australis TEC (EPBC Act and FM Act), • Type 1 and Type 2 habitats (FM Act), and • White's Seahorse habitats (EPBC Act and FM Act). The MBOS proposing two ways to offset the Project's ecological impacts: • Rehabilitating and improving of 2,000 m2 of seagrass in Botany Bay using methods developed by the EPBC Act to provide adequate offsetting. This would also offset the loss of White's seahorse habitat in the area, while providing an improved habitat and environment for the existing Posidonia australis meadow • Creating independent artificial structures to attach to

piles that will form reef habitat for species like seahorses. The structures are predicted to create around 55 m2 of compensatory habitat. (Executive Summary page i)

The MBOS considered the financial offsetting requirements that are set out under NSW and Australian Government policy. This MBOS proposes that part of the money that would be held in trust under the NSW Fisheries Policy would be reinvested into the above offset measures. The estimate strategy cost to implement the offsets is about 50 per cent of the monetary bond (i.e. \$1.4 million AUD) to be paid and the remaining 50 per cent of the bond would feed into the direct offsets (i.e. an additional \$1.4 million AUD). (Executive Summary page ii).

Note that species identified by the Commonwealth such as Cauliflower soft coral (CSC) were not observed by consultants working for the proponent. Divers with decades of experience have posted photographs of CSC. Similar occurred in the EIS with shorebirds such as NSW listed Pied Oystercatchers (Endangered) not being seen at La Perouse when in fact they are regularly observed within the proposed ferry wharf footprint and recorded on e-Bird.

In the MBOS page 2: *“Cauliflower soft coral, which is listed as endangered under the EPBC Act, was identified as potentially present. However, as concluded in section 4.5 of the EIS there are no records or indications that this species is present within the Project area.”*

In Section 2.1, page 9 of MBOS:

The MBOS has been prepared in general accordance with the above Policy (Table 2-1). Where the MBOS differs from the NSW Fisheries Policy is in its view that rehabilitation does not support “seagrass transplanting as an impact compensation measure as the viability of transplanting methods is yet to be scientifically proven for all species.” The MBOS proposes the inclusion of seagrass rehabilitation as part of the strategy given the recent success and advances in seagrass rehabilitation within the region (e.g. Operation Posidonia 3). The workshops held were to work through variations from the policy and confirm what was acceptable.

The MBOS proposes the inclusion of seagrass rehabilitation as part of the strategy given the recent success and advances in seagrass rehabilitation within the region (e.g. Operation Posidonia 3).

Clearly, there is a difference of opinion between Fisheries experts and the authors of the MBOS. The question is who is believable; who is trustworthy. Does one favour the authors of the MBOS who are working for the proponent/developer or the experienced Fisheries experts charged under the Fisheries Act to protect the marine environment.

The workshops held were to work through variations from the policy and confirm what was acceptable.

It is not clear what this is supposed to mean. My interpretation is as follows: the proponent's paid MBOS consultants have held/been involved in workshops and, based on the content of the previous paragraph, decided that they know better than the Fisheries experts and will suggest compensation for their benefit.

At Footnote 3(same page): a *local research initiative led by the Centre for Marine Science and Innovation, UNSW Sydney. Furthermore, transplanting would provide valuable research into seagrass transplanting technology and future rehabilitation of endangered seagrass communities in NSW.*

What is omitted from Footnote 3 is the fact that one of the authors of the MBOS, would head this research and that a sum around \$1million would effectively be diverted from 'compensation' to fund experiments. Marine scientists in Fisheries with decades of experience and divers and fishers with decades of hands-on experience in Botany Bay have agreed that past experiments have failed. Ripping out healthy Posidonia and then funding research experiments by university- based academics is not best science, it is not conservation.

Avoid and mitigate and when totally unavoidable offset. Moving money to academics who then engage other supporters of the proponent's project is not how offsets are intended to be applied for the benefit of the environment.

OFFSETS BOTANY BAY

I have monitored the nearby Port Botany Expansion project from when it was first announced late 2001 to the present. As part of conditions of approval B2.32 <https://www.nswports.com.au/sites/default/files/Uploads/Consolidated-Instrument-of-consent-MOD-1-15.pdf> the proponent Sydney Ports Corporation paid \$8 million for the Penrhyn Estuary Enhancement Plan. This offset was under the EPA's Draft Green Offsets Strategy 2002. It was not an 'enhancement'; the migratory species and others such as Threatened Little Tern which were once observed in good numbers are no longer. Since the 99-year lease of Port Botany the Port Authority of NSW (part of Transport for NSW) has managed Penrhyn. I made observations on this project in 2012 - <https://portbotany.wordpress.com/penrhyn-estuary/> Since then shorebird uptake has declined and it has been confirmed that shorebird targets have not been met – details in final reports. <https://www.portauthoritynsw.com.au/sustainability/environment/penrhyn-estuary-rehabilitation/> Meeting EPBC and International Conventions was the cornerstone of the Penrhyn 'offset' and it has been a failure. It is also worth noting in this context experimental Posidonia planting projects in Botany Bay, including those funded through the Recreational Fishing Trust, have failed. Note here comments in the Recreational Fishing

Alliance submission on the Kamay Ferry Wharves: *“The absolute nonsense dished out by the Port Authority of NSW is laughable considering anglers have been fishing and visiting the area for many decades prior to the Port Expansion and panned the transplanting of seagrass as a failure well before it had even began. The following statement by the Port Authority is the worst case of blame shifting the RFA has even witnessed; “Following completion of the final post-construction survey for the PEHEP in 2017, it was concluded that overall seagrass distribution and species composition within Foreshore Beach had been highly variable, but that these changes were due to factors other than construction for the Port Botany Expansion”*

<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SUB-25891965%2120210811T074426.320%20GMT>

With the development of the Airport, Port and its extension the last remaining natural stretch of the northern shore of Botany Bay (bay waters not ocean) is from La Pouse, around Bare Island, to Bumborah Point in Yarra Bay. Botany Bay is not comparable to Lake Macquarie and Port Stephens where claims success – albeit within a limited timeframe. Botany Bay is heavily modified with few ‘experimental’ places that are not highly exposed. When artificial reefs were placed Fisheries were restricted by Sydney Airport and the Port Authority, as one would expect given the importance of their activities. A number of reefs around Molineux, Congwong and Yarra have not been successful according to recreational fishers. I note here for the benefit of the Committee that Botany Bay was the first declared Recreational Fishing Haven in 2002. A no-take zone came into effect in Penrhyn Estuary in 2003 because of chemical contamination associated mainly with Orica/ICI.

NSW Fisheries were obviously not satisfied with the proponent dismissing their expert advice in the RTS (which includes MBOS) as there was a letter dated 19/11/21

<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=RFI-32073750%2120211119T002239.634%20GMT>

Sent from NSW Planning to Transport which includes the following:

Marine biodiversity

- *Identify all potential direct and indirect impacts associated with construction and operation of the project, including Posidonia australis, White’s Seahorse and Black Rockcod. The MBOS should be revised to ensure compliance with NSW Biodiversity Offsets Policy for Major Projects Fact sheet: Aquatic biodiversity.*
- *Demonstrate how the risk of failure of proposed Posidonia australis transplantation will be reduced or managed, noting that use of the monetary bond to achieve this would form only part of the approach.*
- *Identify potential impacts of ferry type and manoeuvring on seagrass beds including scouring effects.*
- *Clarify why a maximum lifespan of 5 years is proposed for the MBOS.*
- *Identify the ‘before’ benchmark for KPIs measuring the success of MBOS actions.*
- *Demonstrate how the cumulative impact of construction*

and operation on marine biodiversity, required under the Fisheries Management Act 1994 and Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) will be reduced. • Provide a revised risk of loss with offset calculation under the EPBC Act and correct the offset cost discrepancy for Posidonia australis seagrass meadows TEC versus White's Seahorse.

I gather the section, above, was provided by NSW Fisheries. I note here also that the letter from Planning did not contain any request from the EPA even though the EPA had issues with the inadequacy of the contamination sampling and testing in the EIS and the subsequent response.

On 5/4/22 in response to correspondence to the Agriculture Minister 15/1/22, I received a letter from the Hon. Dugald Saunders informing me that:

“The Department of Planning and Environment (DPE) - Planning is concluding the ‘assessment’ stage and DPI Fisheries has been asked for comments on the draft conditions of approval. The department’s concerns regarding a full and proper impact assessment remain and as such have requested an additional impact assessment be conducted following 12 months post construction and operation. This assessment will inform the biodiversity off-set strategy that is required for the subject development.” (uploaded here for Committee’s convenience
<https://laperousemuseum.files.wordpress.com/2022/04/om22-527-letter-to-lynda-newnam.pdf>)

I interpreted this as Fisheries not agreeing to the MBOS, including not agreeing to any MBOS ‘compensation’ being applied to a Posidonia experiment conducted by the UNSW centre named in the MBOS.

ASSESSMENT PROCESS STATE AND COMMONWEALTH

The Kamay Ferry Wharves project is currently listed on the EPBC website as being at Assessment stage <https://epbcpublicportal.awe.gov.au/all-referrals/project-referral-summary/?id=9ca28e6b-681a-eb11-9650-005056842ad1> but there is no further explanation on the website. There is nothing on the NSW Planning main webpage for the project to explain the interactions between the Commonwealth, NSW Fisheries, Planning and the proponent, Transport for NSW. The process does not achieve a level of transparency required to inspire confidence that the best outcomes are being achieved in biodiversity protection.

From 3rd September 2021 through to April 2022 questions about the Project have been asked (including supplementary) at Budget Estimates for Premiers (1 occasion), Transport (3 occasions), Infrastructure (1 occasion), Planning (3 occasions), Environment (2 occasions) and Agriculture (1 occasion) portfolios covering marine impacts, inadequacy of business
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case and the grossly flawed contamination report. My comment on the last of these reflects the pro bono expert opinion of the marine sediments section by Dr Ryall – uploaded for the Committee’s convenience <https://laperousemuseum.files.wordpress.com/2022/04/bill-ryall4.pdf> Poor water quality, from chemical and/or biological contamination, also affects the health of threatened marine species, as well as humans.

At Budget Estimates 3/9/21 Transport Deputy Secretary Howard Collins said:

“The purpose of this wharf is to support the ferry services between La Perouse and Kurnell. Really that is its main purpose”.

On the 4th March 2022 he stated the opposite: *“This is not about a ferry service, to start with. Let me make this clear.”*

AVOID, MITIGATE, OFFSET

Offsets are for residual impacts of projects that have a clear justification – State Significant Infrastructure for the greater benefit of the State. This case study demonstrates flaws not only in how expert advice on protection of Threatened Species is considered in Major Project Planning processes but also raises questions about the integrity of processes within Transport for NSW, Infrastructure NSW and Premiers and Cabinet. At the recent Budget Estimates for Infrastructure it was established that this was graded a Tier 3 project by INSW. At Budget Estimates 3/9/21 Transport Deputy Secretary Howard Collins referred to the interest taken by Messrs Jim Betts and Tim Reardon who at the time of the State and Federal agreement (included the wharves) was signed in May 2018 https://federalfinancialrelations.gov.au/sites/federalfinancialrelations.gov.au/files/2020-05/kamay_250th_annivesary_project.pdf were CEO of INSW and Secretary of Premiers and Cabinet, respectively. The Federal Treasurer at the time was the Member for Cook (Kurnell) Scott Morrison.

This is a project that should not have progressed to an expensive EIS (with MBOS included in the RTS) given the significance of its impacts and the lack of justification/business case. The expenses associated with the EIS are borne by Transport for NSW, however, there have also been considerable resources provided by other Government agencies and the community in defence of the environment and public amenity of Botany Bay. Processes such as this undermine community confidence in the integrity of governments and public servants, particularly those members of governments and public services who may not have been respectful of expert ‘frank and fearless’ advice on the significance of environmental impacts and risks.

Finally, in response to the Terms of Reference:

1. *the use of offsets by the NSW Government for major projects and strategic approvals*

Research/Experiments should not form part of compensation for residual impacts particularly where there is no long- term accountability. Note that Fisheries questioned the limited timeframe of 5 years in the MBOS. I quoted Penrhyn as an example of an offset not achieving targets, however, I would suggest there are many examples where the outcomes have not matched the claims made by experts. Planning need to keep a public register of the veracity of advice given by experts (including government agencies). The testimony of Rachel Musgrave at the Warragamba Dam Inquiry should be a wake-up call for the need for greater public scrutiny. <https://www.smh.com.au/national/nsw/selective-editing-warragamba-expert-self-reported-over-changes-to-research-20211108-p596zf.html>

In this case Transport for NSW has enlisted the support of recognised University academics to challenge the advice of the Government's experts who have legislative responsibilities under the Fisheries Management Act. There is obviously nothing wrong with advice being challenged. Indeed, Planning needs to facilitate a healthy robust discussion around expert advice. And they should to do this well before thousands of pages of an EIS are 'dumped' on a community that hitherto has been subjected to expensive 'gaslighting/consultation' by the proponent/developer's stakeholder engagement/Public Relations team. Nevertheless, the independence of advice may be called into question when those providing the advice are benefiting financially from the proponent. In this case study it is specifically through the MBOS, however, for the project itself there are other expressions of support being associated with grants.

2. *the effectiveness of the scheme to halt or reverse the loss of biodiversity values, including threatened species and threatened habitat in New South Wales, the role of the Biodiversity Conservation Trust in administering the scheme and whether the Trust is subject to adequate transparency and oversight*

The system is not transparent, not intelligible, not accountable. I have engaged on Major Projects over the past 20 years, the first two where the recommendations of Commissions of Inquiry were overruled. It was rare to see COIs overruled: in the case of the Port Expansion (referred to earlier as an Offsets failure) it was after a leadership change (Premier, Deputy Premier/Treasurer, Planning Minister) during the reporting period. I was also a member of the Greater Sydney NE NPWS Advisory Committee for part of the period when the Kurnell Master Plan was being developed. It appeared at the time that outcomes were set, including the ferry wharves and there was no mention of the environmental impacts that these might cause and whether NSW Fisheries had been appropriately consulted. Planning in their Community Consultation Guidelines say they go to the Community for their 'knowledge, ideas and expertise' and yet there are significant barriers to community participation, despite it being an Object in the Environment Planning and Assessment Act. In this case there was no notification to stakeholders such as divers and residents when the EPBC Referral was exhibited. There was nothing on the Planning

website. There were no notices around La Perouse and Kurnell, and nor have there been on-site notices for the development, leaving tens of thousands of regular bay users ignorant of this project and the negative impacts it may have on their enjoyment of the Bay and beaches. The link that Planning do provide on their website is not to the referral but to the Commonwealth Department's main website; the referral reference number required to conduct a search is 'buried' in the 3rd version of the SEARs. For a first-time user (and most people only engage once in these planning processes) it is difficult to navigate. There are 3 versions of the SEARs with no explanation as to why let alone their importance. There is no link to the SSI Guidelines released 1st July 2021 which provide guidance for community participation. For other Major Projects Planning have provided a covering letter for the SEARs and then the full documents from the agencies and likewise in the follow up to RTS when more information is required. They didn't here. As I mentioned earlier Planning did not relay information from the EPA in the follow up to the RTS and in correspondence I received indicated that there were no further discussions - that they were satisfied with what the proponent had provided

<https://laperousemuseum.files.wordpress.com/2022/04/mdpe21-3417-ms-lynda-newnam..pdf>. When contacted the EPA indicated otherwise. I include this because groundwater and surface water quality can have negative impacts on biodiversity and also because of the process.

There is no explanation of how the Commonwealth makes assessment of the impacts of the project on EPBC species. Do they bring an expert voice to the table, or do they simply 'rubber stamp' under the Bi-lateral Agreement? Do they audit the information that the proponent provides in the referral, if so how? Community voices were absent and even if provided their submissions are not put on public record to achieve an open 'conversation' and facilitate collective learnings. There is no explanation as to how NSW Planning will assess NSW Fisheries advice against claims made by the proponent's consultants in the MBOS.

There are a number of Threatened Species potentially impacted by this project, however no Minister has oversight of all of them as some are scheduled under the Fisheries Management Act and some under the Biodiversity Conservation Act. This is difficult for community and adds to the opaqueness and to theatrical 'buck passing' when raised at Budget Estimates. Black Rock Cod, White's Seahorse, Cauliflower Soft Coral and Posidonia <https://www.dpi.nsw.gov.au/fishing/threatened-species/what-current/endangered-populations2/posidonia-australis> 'belong' to Minister Saunders (Agriculture) and Turtles (Green, Loggerhead), Whales (Humpback and Southern Right), and Fur Seals (Australian and NZ) to Minister Griffin (Environment). The fur seals move between resting spots at Molineux and La Perouse inside the ferry footprint but were deemed to be outside scope by the proponent. The submission from the Environment Department didn't cover marine species but did reiterate NPWS concerns for the siting of the 'Kurnell services cabinet'.

NPWS in their submission expressed no concerns about impacts on Threatened Species, the only mention is in regard to observations during construction, but with no specific species listed. Perhaps the 'Kurnell Services Cabinet' will be scheduled in the future, with Transport promoting its connectivity to land values.

<https://www.theleader.com.au/story/5904039/photos-hidden-treasure-in-botany-bay/>

It is not clear what role the Trust plays in auditing and ensuring transparency and accountability. I couldn't find anything when I checked on marine offsets at

<https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity-offsets-scheme/about-the-biodiversity-offsets-scheme> but did come across this document

NSW Biodiversity Offsets Policy for Major Projects Fact sheet: Aquatic biodiversity, dated 2014 in another place on the NSW Environment website.

<https://www.environment.nsw.gov.au/resources/biodiversity/14817aqoffs.pdf>

There appears to be poor coordination within Government making it very difficult for community to follow and be part of Saving Our Species.

On its Threatened Species homepage

<https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/help-save-our-threatened-species> NSW Environment list actions where community can help but

there is no reference to engaging with the Planning system. Once again there is a failure to communicate the complexity of Biodiversity Protection.

On the Saving our Species homepage:

<https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/saving-our-species-program>

The main objectives of SoS are simple: increase the number of threatened species that are secure in the wild in New South Wales for 100 years and control the key threats facing our threatened plants and animals.

Key threats are mentioned but not listed. Yet in the State of Environment Report 2021

<https://www.soe.epa.nsw.gov.au/all-themes/biodiversity/threatened-species>

*The pressures affecting the largest number of threatened species in NSW were found to be native vegetation clearing and **permanent habitat losses** (87%), followed by invasive pest and weed species (70%).*

On Threatened Species Day 2021, the NSW Environment Minister Matt Kean announced a "target of zero extinctions of native wildlife in the state's national parks estate"

<https://www.theguardian.com/australia-news/2021/sep/07/zero-extinction-target-for-nsw-national-parks-welcomed-by-environment-groups> and

<https://mattkean.com.au/news/media-release/zero-extinctions-target-set-nsw-national-parks>

A target of net zero sounds impressive on NPWS estate but if NPWS take no interest in species that move in and out/around borders how effective will it really be, given they manage only 10% of NSW. The SoS 'main objective' may be 'simple' but operationalising it is not, particularly when key players like the Department of Environment (including NPWS and The Trust) take a hands-off approach to advocacy and community education and are not transparent and accountable in the assessment of Biodiversity (including Threatened Species) values in Major Development Planning processes. The Kamay Ferry Wharves is a project being undertaken as part of the NPWS Kurnell Master Plan. The Kurnell Wharf is to be sited in the National Park. The fur seals that relax at La Perouse do so on occasions on NPWS estate within the La Perouse Ferry Wharf footprint.

The Master Plan considers the proposed wharves an integral part of the overall design for the upgraded Kurnell Precinct. <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Parks-reserves-and-protected-areas/Parks-management-other/kamay-botany-bay-national-park-kurnell-master-plan.pdf>

From a Scott Morrison Media Release when he was Commonwealth Treasurer 28/4/2018: *The joint \$25 million commitments will fund a new aquatic monument as well as improvement works to the existing Cook monument built in the 19th century, a new visitors centre, cafe and exhibition space, ferry wharves at La Perouse and Kurnell and disabled access.* <https://ministers.treasury.gov.au/ministers/scott-morrison-2015/media-releases/cooks-landing-site-be-recognised-250th-anniversary>

Joint Media Release from NSW Environment Minister Kean 14/2/2020 *"Stage 1 will include a new visitor centre, cafe and exhibition space, ferry wharves to re-establish the physical, social and cultural link between La Perouse and Kurnell, enhanced access around the site, restoration and repair of the historic Alpha House and conservation works to the 19th century Cook and other monuments."* *The NSW National Parks and Wildlife Service is managing this project and will provide updates on the design and construction of the sculptures at the NSW National Parks and Wildlife Service website.* <https://minister.awe.gov.au/ley/media-releases/sculptures-commemorate-meeting-two-cultures-kamay-botany-bay>

Yet at Budget Estimates answers to questions about impacts to Threatened Species because of this project were met with obfuscation. The attached excerpts from transcripts Budget Estimates for Environment 26/10/21 and 1/3/22, plus answer to Supplementary, serves to illustrate the problem of transparency and accountability in this project. On the surface it appears that while there is concern for the siting of the Kurnell services cabinet, impacts on threatened species as a result of the Kurnell Master Plan are not a consideration. However, I doubt there is a lack of concern by conservationists employed by the Department of Environment (including NPWS) or the two Ministers who inherited this project. \$50 million

could have been applied to conservation projects at Ramsar Listed Towra (in danger of delisting and awarded the Grey Globe in 2012 because of the degradation), and Park estate at Kurnell and La Perouse. It could have commemorated science which was a major feature of the Cook expedition. Botanical Collecting in Botany Bay is the only Scientific Activity to be listed on the National Heritage Register <https://www.awe.gov.au/parks-heritage/heritage/places/national/kamay-botany-bay> (2017).

This project, I think, has been driven by other concerns and this is something for the Committee to consider. Who determines priorities at earlier stages in INSW, Premiers and Cabinet and Treasury (and whoever else) and at what point are trustworthy experts brought into the discussion to provide 'frank and fearless' advice on Threatened Species matters which inform Biodiversity Offsets. Avoid, mitigate and then offset residuals. The Trust and the Department should always keep 'avoid' front and centre AND so too should INSW, Premiers and Cabinet and Treasury (and whoever else). Key elements of the Kamay Ferry Wharves EIS such as the assessment and proposed response to the marine impacts (MBOS) as well as the ERM Contamination report could be regarded as Decision-based 'evidence' (borrowing from Mr Brendan Lyon at the TAHE Inquiry). For the former, Transport set the NSW Fisheries scientists against UNSW academics, for the later they provided a highly padded report listing sampling and testing in areas of lesser concern to distract from sampling and testing that should have occurred but did not. I should say at this point that it is not unusual, nor out of order in all cases, for academics and other parties to benefit from development offsets, from Land and Environment Court environmental penalties, Enforceable Undertakings and industry/developer 'good neighbour' actions. However, co-operation and partnerships need to pass the integrity test. Rachel Musgrave 'self-reported' her concerns when confronted with what she considered unprofessional behaviour and reputational risks. Could the committee recommend protocols to ensure that it is easy and safe for public servants and consultants to speak up when they have evidence that challenges unsubstantiated claims being used to support developments, even when the evidence is deemed outside the individual/team's area.

Thank you.

The only thing necessary for the triumph of evil is for good men to do nothing.



Attachment

Budget Estimates 26th October 2021, Environment & Energy Portfolio

[https://www.parliament.nsw.gov.au/lcdocs/transcripts/2722/CORRECTED%20-%20Transcript%20-%20PC%207%20-%20Energy%20and%20Environment%20\(Kean\)%20-%2026%20October%202021.pdf](https://www.parliament.nsw.gov.au/lcdocs/transcripts/2722/CORRECTED%20-%20Transcript%20-%20PC%207%20-%20Energy%20and%20Environment%20(Kean)%20-%2026%20October%202021.pdf)

The CHAIR: That is a very good thing. Are you aware of the Kamay ferry wharf project? The Kamay ferry is a tourist ferry service from La Perouse to Kurnell?

Mr MATT KEAN: Yes.

The CHAIR: Are you aware that there are at least four endangered species, several vulnerable and many protected species that are going to be at risk if this goes ahead? Have you been briefed on the threats to threatened species as a result of this proposal?

Mr MATT KEAN: I do not believe I have been, or I do not recall being briefed on the specific threat to four endangered species. I am happy for Mr Fleming to provide you with some information.

Mr FLEMING: I cannot recall being briefed or briefing the Minister, but I might ask Ms Stephens if she is aware. Before Ms Stephens starts speaking, I think this is a project that is being implemented largely by Transport.

The CHAIR: Yes. I have a list of a few endangered species that are potentially at risk from this proposal while Ms Stephens is finding her notes: the Bare Island's White's seahorse, the weedy sea dragon, the pot-bellied seahorse and the pipefish. Is that your understanding, Mr Fleming or Ms Stephens?

Ms STEPHENS: I am aware that those species are potentially impacted by the proposal. The department of transport is the proponent for the development, and they are undertaking all the planning and assessment work. The impact to those species will be considered as part of the environmental impact assessment that is being done for the project.

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Mr FLEMING: I am not sure who asked about the Kamay ferry.

The CHAIR: That was me, and we will start your time afresh after this.

Mr FLEMING: Yes, sorry.

The CHAIR: That is okay.

Mr FLEMING: I just wanted to acknowledge that a member of the public has written to the Minister and cc'd me about those issues. I could not recall when I was answering the question, but I did just want to put that on record.

Budget Estimates 1st March 2022, Environment & Heritage Portfolio

<https://www.parliament.nsw.gov.au/lcdocs/transcripts/2870/Transcript%20-%20PC7%20-%20Environment%20and%20Heritage%20-%202%20March%202022%20-%20Corrected.pdf>

The CHAIR: I want to go to a completely different issue, which is the Kamay ferry wharf issue. I have been contacted by a number of members of the community who are particularly concerned about the impact that building an expansion of this wharf will have on the seagrass there, which is endangered—Posidonia australis seagrass—and is the home of the endangered White's seahorse and other threatened species. Have you been briefed on the impact that building this wharf will have on those threatened species?

Mr JAMES GRIFFIN: I have actually visited the proposed location of the wharf and had a look at the national park down there. I am familiar with the ecological sensitivity of seagrass, given particularly that we deal with it quite a lot over in Manly. I understand that national parks and the proponents will be working through the impacts that that wharf may have on that particular area and the seagrass that is around there.

The CHAIR: They will have to clear the seagrass. There will be quite a lot of impact on the seagrass there and that population of endangered White's seahorse. You do not know how they are going to mitigate that impact?

Mr JAMES GRIFFIN: No. My expectation would be that they undertake a comprehensive environmental assessment and look at the potential impacts and the risks. As I said, I have been down there and had a look at where the proposed wharf will go. But unless Mr Fleming has anything further to add, I cannot give you any further specifics on it, other than it would be my expectation that all consideration is given to avoiding the impact on any seagrass that is there.

The CHAIR: Fisheries NSW in its submission to this said it was unable to support the proposal due to the immediate destruction of the seagrass and possible residual impacts due to it becoming fragmented and isolated. Fisheries has also previously questioned the success, which I think is part of the justification for building the wharves—or part of the reason why your department has said that you will manage the impacts is that you will replant seagrass. Fisheries has previously questioned that success of replanting seagrass. Have you had any discussions with Fisheries about it? Do you know about its concerns?

ATTICUS FLEMING: Chair, may I give you some additional information after the break? I am aware of the project. I think it is a Transport lead—Planning obviously runs the assessment process. I have been copied in on various bits of correspondence, so I am broadly aware of the issues. But the specifics of where that assessment is at, I would have to give you that after the break.

ATTICUS FLEMING: In terms of the Kamay wharf project, that is a State-significant infrastructure project. As I think I said, the proponent is Transport for NSW. We did provide advice on the draft EIS. I think the proponent has now done its response to submissions, so the final decision-maker is the Minister for Planning. I wanted to add two things: The vast majority of works are not on the national parks estate; and the specific matters that you raised around the seagrass and the horses, the primary responsibility for advice on those matters is DPI, given its responsibilities under the Fisheries Management Act.

Supplementary Questions:

<https://www.parliament.nsw.gov.au/lcdocs/other/16904/Answers%20to%20supplementary%20questions%20-%20Hon%20James%20Griffin%20MP%20-%20Minister%20for%20Environment%20and%20Heritage%20-%20received%2029%20March%202022.pdf>

Developments impacting wildlife

214. Regarding the Kamay Ferry Wharf proposal at La Perouse, a) is the Department aware of any endangered species that would be impacted by the development and b) if so, how is the Department ensuring their protection?

Answer: 214. a)Yes.

b)The project is considered State Significant Infrastructure under the Environmental Planning and Assessment Act 1979. The role of the Department of Planning and Environment's Environment, Energy and Science Group is to provide advice to Planning on impacts to biodiversity values covered under the Biodiversity Conservation Act 2016. The Department of Primary Industries (Fisheries) is responsible for providing advice on impacts to biodiversity covered under the Fisheries Management Act 1994, such as fish, aquatic invertebrates and marine plants, including seagrasses. Planning assesses the project for consideration by the Minister for Planning. The Minister for Planning can approve the project with or without conditions or refuse it.