

Change to environmental conditions for regional recreation centre Stage 1 Boundary, Port Kennedy

Fleuris Pty Ltd

Report and recommendations
of the Environmental Protection Authority

Environmental Protection Authority
Perth, Western Australia
Bulletin 734
February 1994

THE PURPOSE OF THIS REPORT

This report contains the Environmental Protection Authority's environmental assessment and recommendations to the Minister for the Environment on the environmental acceptability of the proposed changes to the conditions and procedures applying to this project. It is a report under Section 46 of the Environmental Protection Act.

Immediately following the release of the report there is a 14-day period when anyone may appeal to the Minister against the Environmental Protection Authority's report.

After the appeal period, and determination of any appeals, the Minister consults with the other relevant ministers and agencies and then issues his decision about whether the proposal may or may not proceed. The Minister also announces the legally binding environmental conditions which might apply to any approval.

APPEALS

If you disagree with any of the contents of the assessment report or recommendations you may appeal in writing to the Minister for the Environment outlining the environmental reasons for your concern and enclosing the appeal fee of \$10.

It is important that you clearly indicate the part of the report you disagree with and the reasons for your concern so that the grounds of your appeal can be properly considered by the Minister for the Environment.

ADDRESS

Hon Minister for the Environment
12th Floor, Dumas House
2 Havelock Street
WEST PERTH WA 6005

CLOSING DATE

Your appeal (with the \$10 fee) must reach the Minister's office no later than 5.00 pm on 11 March, 1994.

Environmental Impact Assessment (EIA)

Process Timelines in weeks

Date	Timeline commences from receipt of full details of proposal by proponent	Time (weeks)
25 Nov. 1993	Proponent Document Released for Public Comment	
17 Dec 1993	Public Comment Period Closed	3
23 Dec 1993	Issues Raised During Public Comment Period Summarised by EPA and Forwarded to the Proponent	1
1 Feb 1994	Proponent response to the issues raised received	4
22 Feb 1994	EPA reported to the Minister for the Environment	3

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Summary and recommendations

The Port Kennedy Regional Recreation Centre proposal was assessed by the EPA in 1989, approved by the Minister for the Environment in August 1990 (Appendix 1), and received further government endorsement in the Port Kennedy Development Agreement Act of 1992.

During that time active consideration was being given to shifting part of the area proposed for conservation. Following the completion of the EPA's assessment and while the conditions were being set, this possible change was sufficiently likely that the conditions were altered to include a specific requirement for the proponent to investigate the desirability of the change.

The change being considered was a reduction in the northern conservation zone, removing the east-west transect across the northern end of the site but retaining the reservation of the high dune formation adjacent to the coast. The land being considered in exchange as being possibly preferable for conservation purposes, was a triangle of land adjacent to the southern conservation zone, but within Stage 2 of the proposal as referred to the EPA (see Figure 1).

The formalisation of the exchange required two steps:

- satisfying the Minister for the Environment that the exchange was appropriate from a conservation viewpoint; and
- obtaining the Minister's approval for the change of proposal which the land exchange entails.

The first step was completed in October 1993 when the Minister advised the proponent that the relevant condition had been satisfied (Appendix 2). Subsequently the Minister requested the EPA to advise him on the environmental acceptability of the change of proposal. This report contains the EPA's advice to the Minister on the change.

The proponent prepared a document outlining the change of proposal (Appendix 3) which was released for public comment for two weeks in December 1993. Ten submissions were received, and the issues they raised were summarised and referred to the proponent for comment. The issues and the proponent's responses are contained in Appendix 4.

Given that the Minister for the Environment has accepted the desirability of the land exchange, the EPA considers the principal environmental considerations to be to ensure that the removal of the triangular area from Stage 2 does not diminish the intent of the requirement that 75 per cent of Stage 2 should be preserved for conservation purposes, and to provide for the interim management of the Stage 2 area.

The proponent's document has outlined revised commitments which will ensure that the area preserved for conservation will be no less as a result of the exchange. The proponent has also made commitments for the interim management of the Stage 2 area which the EPA endorses. The EPA therefore has concluded that the proposed change is environmentally acceptable, and has recommended that the conditions could be changed to reflect that change.

Recommendation 1

The Environmental Protection Authority considers the proposed change to the boundary between Stages 1 and 2 of the Port Kennedy Regional Recreation Centre Project and the associated commitments regarding the provision for conservation areas and the interim management of the Stage 2 area to be environmentally acceptable and recommends that Condition 1 of the Ministerial statement for the proposal of 16 August 1990 be deleted and replaced by the following condition.

- 1 In implementing the proposal, the proponent shall fulfil the commitments (which are not inconsistent with the conditions or procedures contained in this statement) made in the Environmental Review and Management Programme and in response to issues raised following public submissions**

(consolidated in Environmental Protection Authority Bulletin 398 as Appendix 1, and in the proponent's change of proposal documentation of November 1993 (Appendix 3 of EPA Bulletin 734) (a copy of the commitments is attached).

Some time has passed since the original approval and in that time it has become standard practice for the Minister to set several standard conditions on each approval.

Recommendation 2

The Environmental Protection Authority recommends that the following standard conditions be added to the Ministerial Statement for the project to ensure conformity with recent statements.

- The EPA has established an implementation and auditing system which requires the proponent to advise the EPA on how it would meet the requirements of the environmental conditions and commitments of the project. The proponent would be required to develop a progress and compliance report for this project. In fact this has already commenced with co-operation between the EPA and the proponent's consultants, but it would be appropriate to add the following condition to standardise the approval conditions.

The proponent shall prepare periodic progress and compliance reports to help verify the environmental performance of this project, in consultation with the Environmental Protection Authority.

- The EPA's experience is that it is common for details of the proposal to alter through the detailed design and construction phase. In many cases alterations are not environmentally significant or have positive effects on the environmental performance of the project. The EPA believes that such non-substantial changes, and especially those which improve environmental performance and protection, should be provided for.

Subject to these conditions, the manner of detailed implementation of the proposal shall conform in substance with that set out in any designs, specifications, plans or other technical material submitted by the proponent to the Environmental Protection Authority with the proposal. Where, in the course of that detailed implementation, the proponent seeks to change those designs, specifications, plans or other technical material in any way that the Minister for the Environment determines on the advice of the Environmental Protection Authority, is not substantial, those changes may be effected.

- The Environmental Protection Act does not clearly describe the procedure for changing the proponent, in the event that ownership of the project changes.

No transfer of ownership, control or management of the project which would give rise to a need for the replacement of the proponent shall take place until the Minister for the Environment has advised the proponent that approval has been given for the nomination of a replacement proponent. Any request for the exercise of that power of the Minister shall be accompanied by a copy of this statement endorsed with an undertaking by the proposed replacement proponent to carry out the project in accordance with the conditions and procedures set out in the statement.

1. Background

In 1989 the Environmental Protection Authority assessed the proposal by the Port Kennedy Joint Venture (a partnership between Fleuris Pty Ltd and the Western Australian Development Corporation) for the creation of a major public recreation and conservation park at Port Kennedy. Stage 1 of the proposal included a hotel, marina, holiday accommodation, two golf courses (one public and one private) and conservation areas. No details of Stage 2 were presented, but it was to be primarily retained for conservation.

The EPA released its report and recommendations on the proposal in September 1989 and subsequently the Minister for the Environment issued his approval in a statement with 21 environmental conditions (Appendix 1). The first of these conditions required that the proponent adhere to the proposal as assessed by the EPA.

The original proposal included the identification of two conservation zones within Stage 1, one in the north and one in the south-west. Following the release of the EPA's report and before conditions were set consideration was being given by the proponent to the deletion of part of the northern conservation zone, and its replacement by an area within Stage 2 but adjacent to the southern conservation zone. (see Figure 1)

Condition 14 acknowledged this possibility and required the proponent to review the northern conservation zone (excluding the foredune zone which was to be conserved) in consultation with the Department of Conservation and Land Management. Further, if the Minister was satisfied that it was environmentally preferable, the northern zone was to be exchanged for an equivalent area to be added to the southern conservation zone.

As required by Condition 14, the proponent, in a letter dated 6 September 1993 (Appendix 2), submitted for the Minister's consideration information on the conservation values of the areas outlining the benefits of the proposed land exchange. The Minister's reply (Appendix 2) affirmed that Condition 14 had been satisfied and that the desirability of the exchange had been established.

However, although Condition 14 anticipated this change of proposal, Condition 1 requires the proposal to be implemented as assessed. It is necessary for the Minister to consider whether Condition 1 should be changed to enable the exchange of conservation areas provided for in Condition 14 and now approved by the Minister. Pursuant to Section 46(1) of the Environmental Protection Act, the Minister has asked the EPA to inquire and report on this change to the proposal as assessed.

The matter is further complicated by the fact that the northern conservation zone is within Stage 1, as proposed, while the area proposed for exchange is within Stage 2. And further, the Agreement Act between the State government and Fleuris Pty Ltd (now the sole proponent) defines a different boundary between Stages 1 and 2, anticipating the proposed exchange.

2. Environmental impact of proposed changes

2.1 Issues raised in submissions

The proponent prepared a document (Appendix 2) outlining the nature of the proposed changes to the proposal assessed by the EPA. Comment on this document was sought from a number of relevant government agencies and interest groups. The proposal document was available for public review from 29 November 1993 to 13 December 1993. Ten submissions were received. Those who provided submissions were:

Friends of Port Kennedy
Waterbird Conservation Group
Department of Conservation and Land Management

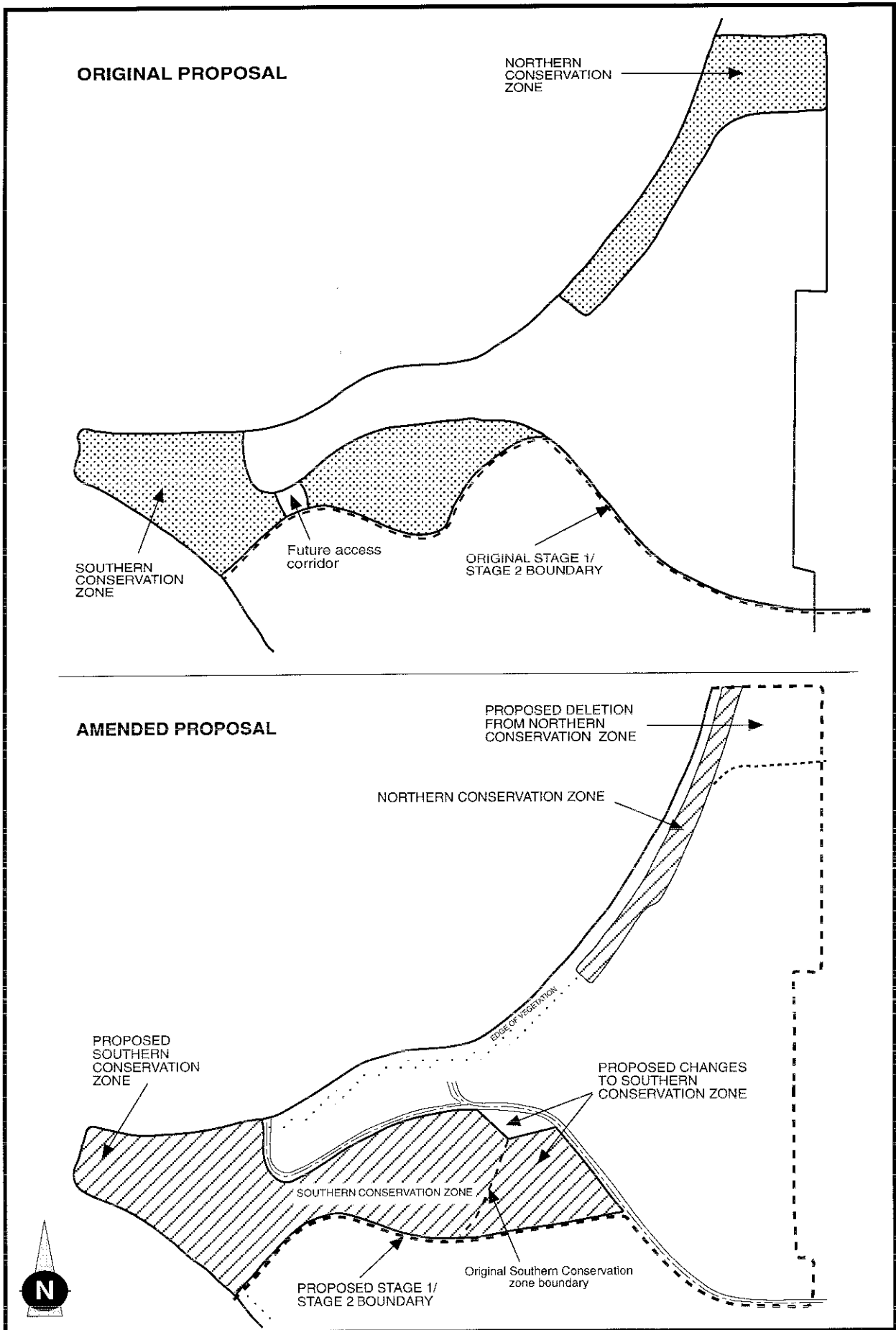


Figure 1. Proposed boundary changes (after maps in the proponent's document).

Department of Marine and Harbours
Wetlands Conservation Society
Hitchin and Associates Pty Ltd (on behalf of the Western Australian Naturalists Club)
Port Kennedy Land Conservation District Committee
Department of Agriculture Western Australia
Conservation Council of Western Australia
Department of Planning and Urban Development

The issues raised in submissions were forwarded to the proponent on 23 December 1993. The proponent's response, which reiterates in full the summarised issues, appears in Appendix 4. Before addressing the specific issues the proponent makes a number of general comments regarding perceived "misunderstandings and/or errors of interpretation in regard to both the purpose of the application, and the rationale for changes to the boundary between Stages 1 and 2." In view of the significance of the points raised they are presented here.

2.1.1 The purpose of the assessment

The proponent considered that some submitters were under the misunderstanding that this assessment was to seek approval of the land area exchange, and pointed out that this had already been given through the satisfaction of Condition 14.

Condition 14 states:-

Prior to construction, the proponent shall review the conservation value of the proposed "Northern Conservation Zone" (i.e. in the northern part of the site, but excluding the foredune zone) in consultation with the Department of Conservation and Land Management.

If in the opinion of the Minister for the Environment it would be environmentally preferable to exchange the northern area for an equivalent area to be added to the "Southern Conservation Zone", then the proponent shall adjust accordingly the proposed conservation zones and areas available for development, to the satisfaction of the Minister for the Environment.

In September 1993 the proponent submitted a compliance and progress report which sought, among other things to satisfy this condition. This included advice from the Department of Conservation and Land Management that on balance the proposed addition to the Southern Conservation Zone offered "greater potential benefit as a conservation reserve". In response the Minister for the Environment in a letter to the consultants dated on 19 October 1993 advised that the condition was satisfied.

However, although Condition 14 anticipated this change of proposal, the change cannot yet be implemented because Condition 1 states that "The proponent shall adhere to the proposal as assessed by the Environmental Protection Authority".

The purpose of this assessment, then, is to consider whether Condition 1 should be changed to enable the implementation of the exchange of conservation areas provided for in Condition 14 and now approved by the Minister.

The proponent further points out that the consideration of this exchange was not instigated by the proponent, but was required by the conditions imposed by the Minister and the provisions of the Agreement Act, and was for the purpose of improving the quality of land to be reserved for conservation purposes.

The rest of this section presents the issues raised in submissions, the proponent's response and the EPA's position on the issue and the response.

2.1.2 Values of the Northern Conservation Zone

Submissions:-

- The Northern Conservation Zone contains a complete undisturbed, east-west transect of the Warnbro high dune system, which is of considerable scientific (geological and geomorphological) value. It is the only undisturbed transect remaining in public ownership. The high dunes have been claimed to be of international significance and a report commissioned by the Australian Heritage Commission (AHC) called for a transect of the high dunes to be reserved. The AHC considered the area qualified for listing on the Register of the National Estate by virtue of its scientific and flora values, and these values have not been recognized in this proposal. Development of the dunes would cause irreversible damage.

Proponent's response

The landform area referred to as "the Warnbro high dune system" is not a part of the conservation land exchange, will remain within the Northern Conservation Zone and will be vested in CALM as part of the proposed "Port Kennedy Scientific Park".

In addition to conserving the area referred to as the "Warnbro high dune system", substantial undisturbed transects through dune sequences of greater geomorphic development and age will remain in public ownership and will be conserved within the Stage 2 Conservation area of the proposed "Port Kennedy Scientific Park".

Condition 14-1 requires the proponent to confirm the conservation value of the land exchange area prior to application for the land exchange. Geomorphological and botanical investigations have been carried out by specialist consultants leading to the following conclusions:

- The area to the east of the "Warnbro high dunes" consists of low terrain of compressed, disturbed and reworked dune sands. Other dune sequences to be conserved in the Stage 2 conservation area are considered to have greater scientific and educational value in addition to their greater ease of interpretation.
- The principal scientific value of any of the dune sequences resides at depth in the topographic position of the contact between the Safety Bay Sand and the Becher Sand stratigraphic units. Correlation of this position with geological age data which can be measured by radio carbon dating of sediment materials at the contact, gives evidence of historical sea level position. This contact occurs at significant depth below the present land surface and therefore will not be disturbed by development.
- Further botanical surveys of the land exchange areas have confirmed the technical desirability of the land area exchange.
- In contrast to the 12.6 ha excised from the northern conservation area, the 17.5 ha added to the southern conservation zone as land exchange has been assessed by specialist scientists, CALM and the Department of Environmental Protection (DEP). Due to the quality of the wetlands and vegetation contained therein, this area is considered to have significantly higher conservation values than the northern land area.

EPA position

The EPA is satisfied on the basis of the available advice that the high dunes will be adequately protected in the foreshore reserve, and will not be subject to development and that the conservation value, including geomorphological value, of the area proposed in exchange exceeds that of the land in the Northern Conservation Zone to the east of the high dunes.

2.1.3 Land exchange within Stage 1

Shift the access road northwards

Submissions:-

- If a land swap is to occur it should be confined to land within Stage 1. This may be achieved by re-aligning the access road (which should remain the boundary of the Southern Conservation Zone) 400 metres northwards, which would protect all the important Becher wetlands and be fair exchange for the loss of the scientifically important land in the Northern Conservation Zone. This would rectify the currently unsatisfactory position of the access road, which passes between important, associated wetlands.

Proponent's response

The conservation area land exchange is confined to Stage 1, as this is referred to in the Port Kennedy Development Agreement Act, 1992

Under Ministerial Condition M14-2, the proponent has been legally obliged to conduct the land exchange in the areas designated by the Department of Environmental Protection and the Minister for the Environment.

The land exchange in the locations designated ensures that a wetland area which would have been available for development, is now protected within a gazetted conservation zone.

As a consequence of this exchange, the developer has lost 6.1ha of land which would have been available for development in Stage 1.

The position of the access road in relation to the geomorphic units, vegetation values and wetland habitat has been investigated in accordance with environmental conditions and has been accepted by the Department of Environmental Protection and the Minister for the Environment.

EPA position

The EPA agrees that the proponent was constrained by the wording of the condition which anticipated that the exchange area would be adjacent to the Southern Conservation Zone. The condition was framed in the knowledge that the area now proposed for exchange was likely to be proposed, and that it lay within Stage 2. It was for this reason that the condition referred to the need to adjust areas available for development.

Given the existing approval for golf course developments in Stage 1, the EPA considers the present road alignment preferable to a more northerly route as it provides a boundary between the areas to the north which are principally to be developed as golf courses, and those to the south which are principally to be conserved. To have some of the development south of the road would be inconvenient and unsafe for golfers and would increase the potential for disturbance of the conservation areas.

Land for swap not assessed in ERMP

Submissions:-

- It is totally inappropriate to exchange land that, although of conservation value, was not addressed in the Environmental Review and Management Programme and not part of environmental approval for Stage 1. The proposed land swap is illusory because it involves exchange of a conservation area in Stage 1 for a conservation area in Stage 2. Both areas should be conserved. The current Ministerial conditions require at least 75 per cent of Stage 2 be conserved so it is likely the important wetlands would be conserved in any case. Any land exchange should occur entirely within Stage 1.

Proponent's response

All parts of the site were addressed in the ERMP. In contrast to the comment, the exchange of land in the areas designated was a condition of approval for Stage 1. The land exchange has taken place within Stage 1 as this is defined in the Port Kennedy Development Agreement Act, 1992.

Additional environmental appraisal and approval for the land exchange areas was specified by the Minister for the Environment's Conditions of approval for the project, granted on 19 October 1993.

The 20ha in question was not available for conservation purposes prior to the land exchange proposal, as it was designated Crown land to be available for lease to the developer once the project was complete. Under the Ministerial condition, 12.6ha was to be made available to conservation purposes, with 7.3ha remaining for development. Following the conservation land exchange, and in consideration of the conservation value of the area, the proponent has made available 18.8ha of wetlands to be included into the proposed "Port Kennedy Scientific Park", with only 2.5ha to be available for development.

EPA position

Section 46 of the Environmental Protection Act makes specific provision for the assessment of changes which were not part of the original proposal.

Whether or not the land proposed for exchange was included in Stage 1 or Stage 2 is not of environmental significance except to the extent that the land in Stage 2 was subject to the requirement that no more than 25 per cent of it be developed. The proponent has made commitments to ensure that the intent of this requirement will continue to be met.

Land for swap would be conserved anyway

Submissions:-

- The question was raised whether the area within Stage 1 to be swapped by the proponent is already a leasehold conservation area;- that is already effectively part of the Southern Conservation Zone (SCZ), in which case the land swap is definitely not environmentally desirable. Notwithstanding this, the land in question should not be part of the proponent's leasehold conservation area as it was not assessed by the EPA and resulted from an error during passage of the Port Kennedy Development Agreement Bill through Parliament. That is, this area should not even be available for exchange.

Proponent's response

The various components of this comment have previously been addressed above. In brief:

The southern area subject to the land exchange was not part of the Southern Conservation Zone. For the purposes of environmental approval, the area was considered to be part of Stage 2 by the Minister for the Environment, and hence was subject to consideration for development under the parliamentary agreement made to the proponent for 25 per cent of Stage 2. For the purposes of development approval however, the area was considered to be Stage 1, but was designated to be leased to the proponent once the project was complete. Under the current situation, this area is guaranteed protection through vesting in CALM as Stage 1 of the proposed "Port Kennedy Scientific Park"

The areas in question were assessed by the Department of Environmental Protection under Ministerial Conditions M14-1 and M14-2 during the approval process for commencement of the project, and approved by the Minister for the Environment on 19 October 1993.

The Minister for the Environment's conditions requiring that the land exchange be undertaken were drafted prior to the passing of the Port Kennedy Development Agreement Act, 1992. The proponent was obliged to investigate and undertake the land exchange irrespective of the Act. Given that the Act was subject to reading in two houses of Parliament prior to being passed, it is unlikely to contain a major error as claimed. The boundary designated in Schedule 3 of the Act anticipates the Minister for the Environment's desire for the land exchange.

EPA position

The land proposed for exchange was within Stage 2 and under the initial assessment no firm proposal for its use had been considered. At least 75 per cent of Stage 2 as assessed is required to be reserved, but the areas to be developed have not been determined. The inclusion of the area in Stage 1 in the Agreement Act was not an error but reflected the government's desire to consider the land exchange. This desire was also reflected in the wording of Condition 14.

Review all conditions, fix errors in assessment

Submissions:-

- It is appropriate, in seeking changes to Condition 1 of the environmental conditions, to review all environmental conditions. This would provide an opportunity to remedy errors in the EPA assessment report and also to adopt the recommendations of the Port Kennedy Development Appeals Committee to reserve all of Stage 2 for conservation, and fence the conservation areas. This is the policy of the current Government which claims it is committed to the establishment of Australia's first Scientific Park at Port Kennedy.

Proponent's response

The Ministerial environmental conditions are recent, and were prepared and released in 1993 some four years after the publication of the Environmental Protection Authority assessment report. Over this time, thorough review of the project has been made by the Environmental Protection Authority. As a consequence, development of the Port Kennedy Project will require compliance with over 85 environmental conditions, making it the most stringently controlled land development in the history of WA. These conditions are also incorporated into the Port Kennedy Development Agreement Act 1992, which has been required to pass through two houses of Parliament. The proponent considers that considerable review, assessment, public consultation and effort has gone into developing the recent environmental conditions, and that further review is unwarranted.

The current government is legally obliged to comply with the Port Kennedy Development Agreement Act, 1992, which allows for 25 per cent of Stage 2 to be excised for development. Under the Conservation Management Plan to be prepared for the site, the areas reserved for conservation will be fenced and are proposed as the "Port Kennedy Scientific Park".

EPA position

The EPA is not aware of the errors referred to. There is already a requirement for the conservation areas to be fenced.

Include land in Scientific Park

Submissions:-

- The proposed land exchange is unnecessary as it is more appropriate to retain the land earmarked for exchange within Stage 2, for consistency of land use. There is benefit in the proposal only if this land is included in the Scientific Park.

Proponent's response

The land in question is to be included in Stage 1 of the proposed "Port Kennedy Scientific Park".

EPA position

The proposed land exchange was required to be investigated under the environmental conditions applied to the proposal. The Minister has determined on the basis of the proponent's investigations that it is beneficial. The inclusion of the land within the Southern Conservation Zone ensures consistency of land use. The proponent has undertaken to include the land in the Scientific Park.

2.1.4 Provisions needed in the northern area

Submissions:-

- The northern beaches are a very popular area and land exchange involving the NCZ needs to address public access to the beaches and the existing car parks.

Proponent's response

The land exchange does not affect any commitment or obligation by the proponent to address the issue of public access to the northern beaches. In fact, the excision of land from conservation zoning increases the possibility of constructing a car park to enhance access to the northern beaches and Northern Conservation Zone. The planning of public access pathways through and adjacent to the Northern Conservation Zone is currently being undertaken in consultation with DPUD and CALM. This is required in order to reconcile the projected increase in local and regional population and the expected demand for increased public access, with the need to protect dune land forms and vegetation.

EPA position

The provision for public access to the beach at the northern end of the site is appropriate. Formalisation of the access and associated facilities is necessary to ensure the protection of the high dunes. The EPA is satisfied that this can be achieved by the proponent in co-operation with the Department of Planning and Urban Development's Coastal Management Branch.

Submissions:-

- The proposed land exchange conflicts with the proposed Metropolitan Region Scheme South-West Corridor Major Amendment, which proposes the whole of the NCZ be reserved for Parks and Recreation. The land exchange also conflicts with the draft South Metropolitan Coastal Planning Strategy, which recommends a regional level beach and public facilities node on land in the NCZ subject to the exchange. The changes described in the proponent's proposal may compromise the provision of public facilities and public access. The appropriate location of the northern public Parks and Recreation reservation needs to be resolved and depicted in Figure 3 "Amended Port Kennedy Stage 1 Boundaries" of the proposal document to effect Condition 14 of the Minister for the Environment's approval.

Proponent's response

The proposed Metropolitan Region Scheme South-West Corridor Major Amendment is currently in the process of being modified to reflect the approved boundary changes as described in this application.

Prior to the land exchange, it was considered unlikely that a car-park would be developed within the Northern Conservation Zone. With the excision of this land from conservation zoning, the provision of public facilities and public access is possible, and the proponent has expressed a desire to assist in this respect. Recommendations for a regional beach level facilities node at this location are currently being assessed in view of the need for controlled public access in the north western sector of the project area. However, the

potential for location of a regional node elsewhere on the site is also incorporated in the assessment. The results of this assessment will be included in the Conservation Management Plan currently in preparation.

The position of the amended Northern Conservation Zone has been presented to the Minister for the Environment as Ministerial Condition M2-2 in order to effect approval granted on 19 October 1993. The conservation zone boundaries are currently in the process of being surveyed prior to gazettal and vesting in CALM.

EPA position

These issues are planning issues (see position on previous issue).

Foreshore reserve must be wide enough to protect high dunes

Submissions:-

- No dimensions or scale are provided with the proposal document so that it is not possible to gauge the width of the amended NCZ. The eastern boundary should be at least 100 metres from the western edge of vegetation, and follow the base of the dune sequence to ensure no earthworks occur on the dunes. Any reduction in width of the foreshore reserve will have significant impact on shore and dune stability. If the reduced width of the NCZ stands, land use adjacent to the eastern boundary should be constrained to minimise impacts.

Proponent's response

The application process for the conservation land exchange was undertaken in 3 September, full documentation of the proposal was presented at that time, and approval granted by the Minister for the Environment on 19 October 1993. The purpose of this application is to seek the necessary change to Ministerial Condition 1 in order to recognise that approval. Hence the purpose of the diagrams was to provide background for the application. Full documentation and scaled drawings are available in the progress and compliance report — Stage 1.1 Port Kennedy Development Project. Nevertheless, the following responses are provided in brief;

- The eastern boundary is greater than the approved foreshore width and is greater than 100 metres from the western edge of vegetation. No reduction in width of the foreshore reserve will occur.
- The boundary follows the base of the sequence of topographically higher and steeply sloping dune formations and the only earthworks within this area will be for rehabilitation purposes if necessary. The existing track at the eastern boundary will form a dual use pathway to enable access further south.

EPA position

The EPA agrees that it is important that the eastern boundary of the reserve be sufficiently far east to protect the base of the high foredunes from development impacts. The proponent's commitments should ensure this.

Management plans required before exchange approval

Submissions:-

- Prior to approval for the land exchange:
 - (a) a comprehensive foreshore management plan should be required; and
 - (b) the wetlands of the area need to be surveyed and a comprehensive management plan prepared.

Proponent's response

Approval for the land exchange has already been given by the Minister for the Environment. As no change to the foreshore reserve was proposed, a foreshore management plan was not considered necessary prior to approval, as detailed rehabilitation and management plans for the foreshore reserves of the site will be included within the Conservation Management Plan required prior to approval for the next stage of the project.

Management of the wetlands within the conservation areas is required within the Conservation Management Plan to be completed prior to approval for the next stage of the project.

EPA position

While both plans are needed, it is not necessary that they be prepared prior to the approval of the land exchange.

2.1.5 Other matters

Triangular excision from Southern Conservation Zone is inappropriate

Submissions:-

- The proposal indicates a triangular tract of land south of the access road which is not to be part of the SCZ. This land impinges on the central wetland complex within Stage 1 and is contradictory to Government policy that valuable dunes and wetlands in Stage I be protected. The north-west corner of this land is currently part of the SCZ and appears to be removed from the SCZ under this proposal. The proposal document does not address this

Proponent's response

Under the ministerial requirements, the proponent was required to excise 12.6ha of leasehold land from the 20ha occurring adjacent to the southern conservation zone, leaving 7.3ha available for development purposes. However, environmental assessment indicated that this action would dissect wetlands which occurred over approximately 18ha of this area. The proponent therefore agreed to relinquish 18.8ha, constituting the wetlands and an appropriate buffer zone, in return for 2.5ha to be made available for development purposes. This agreement involved a change of boundary for approximately 1.3ha of the original proposed Southern Conservation Zone. The resultant triangular area of land (2.5ha) does not impinge upon nearby wetlands and is physically discreet from the dampland/wetland areas. The acceptability of placing future development in this area, in the context of the flora and extensive tracts of dune landforms which will be conserved within the project area, has been confirmed by the proponent's specialist botanical and geomorphological consultants.

EPA position

While the proposed exchange is appropriate in terms of area, the fact that the 2.5ha area is to be surrounded by conservation reserve and the road means that the opportunities for appropriate development are limited. It may be that facilities (e.g. parking, interpretive centre) for those using the conservation areas would be appropriately located in this area.

Until there are firm plans for development of the area it would be appropriate for it to be managed and protected in conjunction with the adjacent reserve. This would maximise flexibility for future plans for the area.

Plan in proposal document inadequate

Submissions:-

- The plan in the proposal document detailing the proposed changes is inadequate. Stage and zone boundaries are inadequately identified and the original conservation zone boundary is incomplete.

Proponent's response

The application process for the conservation land exchange was undertaken in September 1993, full documentation of the proposal was presented at that time, and approval granted by the Minister for the Environment on 19 October 1993. The purpose of this application is to seek the necessary change to Ministerial Condition 1 in order to recognise that approval. Hence the purpose of the diagrams was to provide background for the application. Full documentation and scaled drawings are available in the progress and compliance report — Stage 1.1 Port Kennedy Development Project.

EPA position

The EPA agrees that the diagrams in the proposal document are indicative only, and would not, of themselves be adequate to execute the land exchange. While the documentation seeking approval for the land exchange was at a larger scale, it could not readily be overlain on other data from the original assessment. The proponent's consultants have developed a detailed Geographic Information System database to integrate the available information. This is being progressively updated with information as investigations.

Desirability of the exchange not substantiated

Submissions:-

- The proponents do not substantiate their claim that the land exchange is environmentally desirable.

Proponent's response

The proponent s disagree with this assertion and note that technical evidence presented in support of the land exchange was accepted by the Department of Environmental Protection and the Minister for the Environment, leading to final approval for the land exchange to occur.

EPA position

The proponent's compliance and progress report which sought, among other things to demonstrate the desirability of the exchange included advice from the Department of Conservation and Land Management that on balance the proposed addition to the Southern Conservation Zone offered greater potential benefit as a conservation reserve. The EPA has no reason to doubt this advice.

Submissions in favour

- Two submissions expressed support for the proposal.

2.2 Environmental impacts of the changes, and their management

The environmental considerations of this exchange of land for conservation relate to commitments made by the proponent and conditions set by the Minister about the proportions of Stages 1 and 2 which should be devoted to conservation. Under Conditions 17 and 18, at least 75 per cent of Stage 2 (as assessed by the EPA) is required to be set aside for conservation. If the Stage 1/Stage 2 boundary is shifted, it is necessary to ensure that the intent of this condition is preserved.

The Agreement Act has the same requirement, but its associated map shows the shifted boundary. However, under Section 26 of Schedule 1, the Agreement Act also requires compliance with the environmental conditions, so conditions 17 and 18, being the more stringent, must be complied with.

In documentation provided to support the boundary change (Appendix 2), the proponent has shown that proposals for Stage 1 and commitments for Stage 2 with the modified boundary will ensure that the area set aside for conservation will be at least as great as required under the proposal as assessed by the EPA and approved by the Minister.

The EPA therefore concludes that the conditions could be changed to reflect the proposed boundary change.

Given the indeterminate programming of Stage 2 the EPA considers the proponent's commitments regarding interim management arrangements for the Stage 2 area appropriate.

Recommendation 1

The Environmental Protection Authority considers the proposed change to the boundary between Stages 1 and 2 of the Port Kennedy Regional Recreation Centre Project and the associated commitments regarding the provision for conservation areas and the interim management of the Stage 2 area to be environmentally acceptable and recommends that Condition 1 of the Ministerial statement for the proposal of 16 August 1990 be deleted and replaced by the following condition.

- 1 In implementing the proposal, the proponent shall fulfil the commitments (which are not inconsistent with the conditions or procedures contained in this statement) made in the Environmental Review and Management Programme and in response to issues raised following public submissions (consolidated in Environmental Protection Authority Bulletin 398 as Appendix 1, and in the proponent's change of proposal documentation of November 1993 (Appendix 2 of EPA Bulletin 734) (a copy of the commitments is attached).**

Some time has passed since the original approval and in that time it has become standard practice for the Minister to set several standard conditions on each approval.

Recommendation 2

The Environmental Protection Authority recommends that the following standard conditions be added to the Ministerial Statement for the project to ensure conformity with recent statements.

- The EPA has established an implementation and auditing system which requires the proponent to advise the EPA on how it would meet the requirements of the environmental conditions and commitments of the project. The proponent would be required to develop a progress and compliance report for this project. In fact this has already commenced in co-operation between the EPA and the proponent's consultants, but it would be appropriate to add the following condition to standardise the approval conditions.

The proponent shall prepare periodic progress and compliance reports, to help verify the environmental performance of this project, in consultation with the Environmental Protection Authority.

- The EPA's experience is that it is common for details of the proposal to alter through the detailed design and construction phase. In many cases alterations are not environmentally significant or have positive effects on the environmental performance of the project. The

EPA believes that such non-substantial changes, and especially those which improve environmental performance and protection, should be provided for.

Subject to these conditions, the manner of detailed implementation of the proposal shall conform in substance with that set out in any designs, specifications, plans or other technical material submitted by the proponent to the Environmental Protection Authority with the proposal. Where, in the course of that detailed implementation, the proponent seeks to change those designs, specifications, plans or other technical material in any way that the Minister for the Environment determines on the advice of the Environmental Protection Authority, is not substantial, those changes may be effected.

- The Environmental Protection Act does not clearly describe the procedure for changing the proponent, in the event that ownership of the project changes.

No transfer of ownership, control or management of the project which would give rise to a need for the replacement of the proponent shall take place until the Minister for the Environment has advised the proponent that approval has been given for the nomination of a replacement proponent. Any request for the exercise of that power of the Minister shall be accompanied by a copy of this statement endorsed with an undertaking by the proposed replacement proponent to carry out the project in accordance with the conditions and procedures set out in the statement.

Appendix 1

**Statement and environmental conditions and commitments for the
original proposal**



WESTERN AUSTRALIA
MINISTER FOR THE ENVIRONMENT

STATEMENT THAT A PROPOSAL MAY BE IMPLEMENTED (PURSUANT TO THE
PROVISIONS OF THE ENVIRONMENTAL PROTECTION ACT 1986)

PORT KENNEDY REGIONAL RECREATION CENTRE - BECHER POINT, STAGE I

This proposal may be implemented subject to the following conditions:

1. The proponent shall adhere to the proposal as assessed by the Environmental Protection Authority and shall fulfil the commitments (which are not inconsistent with the conditions or procedures contained in this statement) made in the Environmental Review and Management Programme and in subsequent correspondence (copy of consolidated and amended commitments attached).
2. The proponent shall not commence development until the following have been undertaken, to the satisfaction of the Minister for the Environment, on advice of the Environmental Protection Authority and the Department of Conservation and Land Management:
 - (1) Initiation of a management planning study for the proposed M101 Marine Park (Cape Peron, Shoalwater Bay and Warnbro Sound);
 - (2) In respect of the System 6 recommendations for Port Kennedy (M106), provision of plans by the proponent confirming the location and extent of all conservation zones and natural vegetation areas;
 - (3) Initiation of the mechanisms necessary to secure conservation zones under appropriate Crown Reserve vestings, subject to condition 14 being satisfied beforehand, and
 - (4) Provision of plans by the proponent confirming the location and extent of all public access areas to be secured under appropriate Crown Reserve vestings.
3. The proponent shall retain the services of an expert coastal geomorphologist, for the duration of the construction and commencing at least six months prior to construction, with terms of reference to include, amongst other things:
 - (1) To report further on the impact of the proposed development on the scientific values of the coastal geomorphology of the Bridport Point area;
 - (2) To report further on the changes to the coastal processes associated with the cusped foreland caused by the proposed marina development;
 - (3) To provide detailed advice on the geomorphological features in the Stage II areas for incorporation into the land use plan (see Condition 17(1));

Published on

- (4) To determine monthly variation in the configuration of the vegetation line, mean higher high water level position and the location of the one metre isobath in the vicinity of the marina;
- (5) To retrieve data from areas and to investigate major scientific questions in areas to be significantly modified by construction; and
- (6) To make available to the public all data collected.

The proponent shall employ terms of reference and shall conduct and report this research to the satisfaction of the Environmental Protection Authority.

4. Prior to construction, the proponent shall prepare, and subsequently implement a geomorphological site management plan, to the satisfaction of the Minister for the Environment on advice of the Environmental Protection Authority.

This plan shall provide for the protection of the international scientific value of the site (eg. Holocene dune assemblage and its accumulated scientific knowledge; potential for yielding information and predicting effects on coastal processes) and shall provide for access (through planning and design of facilities) to the majority of the site for scientific research purposes, in perpetuity.

5. Prior to construction of the groynes and marina basin, the proponent shall undertake a study of not less than 12 months' duration and report on the likely impacts of the proposed development on the fishery resource in the vicinity of the proposed marina, to the satisfaction of the Minister for the Environment on advice of the Fisheries Department.

In the event that adverse impacts on the fishery resource are predicted, the proponent shall undertake action, including possible modification of the design of the marina, to ensure that such impacts are minimised to the satisfaction of the Minister for the Environment on advice of the Environmental Protection Authority and the Fisheries Department.

Additionally, the proponent shall monitor this fishery resource, including quantitative data of the available resource, for at least 12 months prior to and during construction of the marina and for a period of not less than five years following the completion of construction, during which time the proponent shall prepare and submit annual reports, to the satisfaction of the Environmental Protection Authority on advice of the Fisheries Department.

In the event that adverse impacts on the fishery resource occur, the proponent shall undertake remedial action to the satisfaction of the Environmental Protection Authority on advice of the Fisheries Department.

The proponent shall fund this study and monitoring programme separately, over and above the provision of funds already committed (in commitments 15 and 16), to the satisfaction of the Minister for the Environment.

6. Prior to construction of the groynes and marina basin, the proponent shall provide details of a sediment plume monitoring and management programme, which the proponent shall undertake at the time of construction and during subsequent dredging programmes, and which shall provide for remedial action should a potential problem be detected, to the satisfaction of the Minister for the Environment on advice of the Environmental Protection Authority, the Department of Marine and Harbours, the Department of Conservation and Land Management and the Fisheries Department.
7. Prior to construction of the groynes and marina basin, the proponent shall provide, to the satisfaction of the Minister for the Environment, on advice of the Environmental Protection Authority and the Departments of Marine and Harbours and Conservation and Land Management :

- (1) Final design details with adequate supporting data;
 - (2) A plan detailing the extent of the entrance channel and bathymetry of the entrance;
 - (3) Details of the volume of sand to be by-passed for the depth of entrance channel determined; and
 - (4) Details of the sand by-pass system, timing of the operation, an estimate of costs (capital and maintenance) and details of funding.
8. Prior to construction of the groynes and marina basin, the proponent shall undertake a study of not less than 12 months' duration to obtain baseline data and to provide a detailed assessment of the likely impact of the proposed marina on the penguin population of Penguin Island, and to determine the interrelationship with, and dependence of the penguin population on the fishery resource, to the satisfaction of the Minister for the Environment on advice of the Department of Conservation and Land Management (See condition 5).

Additionally, the proponent shall monitor the penguin population during construction of the marina and for a period of not less than five years following the completion of construction, during which time the proponent shall prepare and submit annual reports including an assessment of the impact of the marina on the population, to the satisfaction of the Environmental Protection Authority on advice of the Department of Conservation and Land Management.

In the event that adverse impacts on the penguin population occur as a result of the development, the proponent shall undertake remedial action to the satisfaction of the Environmental Protection Authority on advice of the Department of Conservation and Land Management.

The proponent shall fund this study and monitoring programme separately, over and above the provision of funds already committed (in commitments 15 and 16), to the satisfaction of the Minister for the Environment.

9. At least six months prior to the commencement of the construction of the groynes and marina basin, the proponent shall prepare and subsequently implement a comprehensive monitoring and management programme for the water, sediments and biota for a range of parameters, including heavy metals and tri-butyl tin oxide (TBTO), to the satisfaction of the Minister for the Environment on advice of the Environmental Protection Authority.

The proponent shall include in the proposed marina water quality monitoring programme monitoring of the concentration of pollutants during critical environmental conditions and shall draw up a contingency plan for improvement of water quality, to the satisfaction of the Environmental Protection Authority.

10. Within two years of the completion of the construction of the groynes and marina basin, the proponent shall prepare and undertake field investigations of the flushing characteristics of the marina in order to support previously predicted flushing times, to the satisfaction of the Environmental Protection Authority.
11. Prior to construction, the proponent shall prepare and subsequently implement a sand dune stabilisation and management programme, to the satisfaction of the Minister for the Environment on advice of the Environmental Protection Authority and the Departments of Marine and Harbours, Agriculture and Planning and Urban Development.
12. Prior to construction, the proponent shall prepare and implement a groundwater monitoring and management programme for the site and its environs to the satisfaction of the Minister for the Environment on advice of the Water Authority of Western Australia. In the event that adverse impacts occur to groundwater on or adjacent to the site as a result of the development, the proponent shall undertake remedial action, to the satisfaction of the Environmental Protection Authority on advice of the Water Authority of Western Australia and the Department of Conservation and Land Management.

13. To facilitate the application of water conservation measures throughout the project, during the design phase and prior to construction of either golf course, the proponent shall prepare a preliminary landscape contingency plan which provides for a reduction in water usage for irrigation purposes to the satisfaction of the Environmental Protection Authority, on advice of the Water Authority of Western Australia and the Department of Agriculture. The proponent shall implement this plan, which shall be updated within five years of the completion of construction of the above-mentioned golf course, as directed by and to the satisfaction of the Environmental Protection Authority.

14. Prior to construction, the proponent shall review the conservation value of the proposed "Northern Conservation Zone" (ie. in the northern part of the site, but excluding the foredune zone) in consultation with the Department of Conservation and Land Management.

If in the opinion of the Minister for the Environment it would be environmentally preferable to exchange the northern area for an equivalent area to be added to the "Southern Conservation Zone", then the proponent shall adjust accordingly the proposed conservation zones and areas available for development, to the satisfaction of the Minister for the Environment.

15. Prior to construction commencing, the proponent shall prepare a management plan for the proposed terrestrial and wetland conservation areas in consultation with the Department of Conservation and Land Management, to be implemented by the management body responsible for Port Kennedy, to the satisfaction of the Minister for the Environment on advice of the Environmental Protection Authority and the Department of Conservation and Land Management.

16. The management body responsible for Port Kennedy shall include a representative from the Department of Conservation and Land Management, a representative from the Fisheries Department, and such other representatives as deemed appropriate by the Minister for the Environment.

17. Prior to any development of Stage II (which the proponent shall refer to the Environmental Protection Authority for assessment), the following shall be undertaken to the satisfaction of the Minister for the Environment on advice of the Environmental Protection Authority and the Department of Conservation and Land Management:

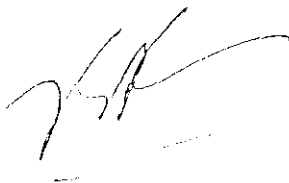
- (1) Preparation of a land use plan for Stage II (with particular consideration being given to conservation of the wetlands of the Quindalup dune system), by the proponent in conjunction with the Department of Conservation and Land Management, which allows for not less than 75 per cent of the Stage II area to be set aside for conservation purposes and which includes the important wetlands within the conservation area, and
- (2) Provision for the vesting of lands, identified according to sub-part (1) above, as "regional park" as an addition to the land in the Southern Conservation Zone of Stage I.

18. The proponent shall not commence construction prior to the finalisation of a suitable legal agreement between the proponent and the State Government (the Department of Marine and Harbours and other relevant government agencies) to cover but not limited to the following:

- (1) Provision for any possible shoreline restoration;
- (2) On-going funding and management (including restoration) responsibilities;
- (3) Appropriate management of the fishery in the vicinity of the proposed marina in the event that the development has adverse impacts upon it; and
- (4) An undertaking that not less than 75 per cent of the Stage II area will be set aside for conservation purposes and on related matters.

to the satisfaction of the Minister for the Environment on advice of relevant government agencies.

19. The proponent shall be responsible for decommissioning redundant structures or facilities constructed during Stage I, and rehabilitating the site and its environs, to the satisfaction of the Environmental Protection Authority. At least six months prior to decommissioning any redundant structures or facilities, the proponent shall prepare a decommissioning and rehabilitation plan to the satisfaction of the Environmental Protection Authority.
20. No transfer of ownership, control or management of the project which would give rise to a need for the replacement of the proponent shall take place until the Minister for the Environment has advised the proponent that approval has been given for the nomination of a replacement proponent. Any request for the exercise of that power of the Minister shall be accompanied by a copy of this statement endorsed with an undertaking by the proposed replacement proponent to carry out the project in accordance with the conditions and procedures set out in the statement.
21. If the proponent has not substantially commenced the project within five years of the date of this statement then the approval to implement the proposal as granted in this statement shall lapse and be void. The Minister for the Environment shall determine any question as to whether the project has been substantially commenced. Any application to extend the period of five years referred to in this condition shall be made before the expiration of that period, to the Minister for the Environment by way of a request for a change in the condition under Section 46 of the Environmental Protection Act. (On expiration of the five year period, further consideration of the proposal can only occur following a new referral to the Environmental Protection Authority.)



Bob Pearce, MLA
MINISTER FOR THE ENVIRONMENT

[16 AUG 1990

PORT KENNEDY REGIONAL RECREATION CENTRE

CONSOLIDATED AND AMENDED COMMITMENTS (25 MAY 1990)

1. The Proponent will pay the cost of maintenance of facilities as required by the Development Agreement. The Development Agreement will incorporate conditions of the Minister for the Environment. The Development Agreement will be conditional upon granting of environmental approvals.
2. On completion of the construction period, the Proponent guarantees that public access will be provided between gazetted roads and public beaches and other areas of public open space in accordance with the diagrammatic representation shown in Figures 5 and 8.
3. On completion of the construction period, the Proponent guarantees that public access will be provided along all beaches and in all sections of the marina between freehold land and the waterfront.
4. On completion of the construction period, the Proponent will hand over public amenities in accordance with the requirements of the Development Agreement.
5. The Proponent will construct a minimum of 100 pens for use by the public on a long and short term rental basis after the end of the construction period in accordance with the requirements of the Development Agreement.
6. The Proponent will construct an 18 hole golf course for use by the public after the end of the construction period in accordance with the requirements of the Development Agreement.
7. The Proponent will ensure that representative areas of conservation value, as shown diagrammatically in Figure 6, are marked out from the start of the construction work. These areas will be set aside and managed as described in detail in Section 12.2.3.
8. The Proponent will arrange that existing tracks, existing potential erosion zones and areas exposed during construction are sealed and rehabilitated during the construction period by inclusion of the requirements in the contract specification. The proposed methods of stabilisation and ongoing monitoring will be as described in detail in Section 12.3.
9. The Proponent will develop a fire management plan in conjunction with the Bush Fires Board and the Department of Conservation and Land Management. The fire management plan will be implemented at the inception of the construction by inclusion of the requirements in the construction contract. At the completion of the construction period, the Proponent will take over responsibility for the fire management plan. The proposed fire management plan will be as outlined in Section 12.2.4.

10. The Proponent will monitor all impacts on terrestrial habitats as described in Sections 12.2 and 12.5. The Proponent will provide the necessary labour and equipment to implement corrective measures.
11. Subject to resolution of requirements with the relevant Government Departments, the Proponent will incorporate, in the final design, a total of 30m² office space for use by an inspector or ranger from each of the Fisheries, Marine & Harbours and Education Departments and the Department of Conservation and Land Management.
12. Prior to commencing construction, the Proponent will initiate monitoring of the shoreline at the marina site. Ongoing monitoring and management of sediment transport and sand bypassing will be undertaken by the Proponent as described in Section 12.3.

In addition, the Proponent will co-ordinate the excavation of a number of trenches adjacent to the marina prior to construction in conjunction with investigations undertaken by a recognised expert in the field of geomorphology.

13. The Proponent will monitor and manage groundwater abstraction as described in Section 12.4. Field testing of the shallow aquifer will commence after environmental approval for the project is received in order to define the need or otherwise for use of supplementary sources such as the deeper Yarragadee aquifer.
14. Following completion of construction, the Proponent will monitor the marina and harbour water quality as described in Section 12.6. If monitoring reveals problems the Proponent will undertake further assessment, testing and remedial measures as resolved with the Environmental Protection Authority and the Department of Marine & Harbours.

The Proponent will provide sand buffer zones on either side of the marina to prevent localised erosion occurring during the initial construction and operation phase. The Proponent will provide as part of the detailed design calculations, the reflected wave patterns from the finalised marina breakwater to confirm that the impact on the stability of Becher Point will be minimal.

15. The Proponent will provide to the Environmental Protection Authority a sum of \$40,000 for a baseline survey of the marine environment six months prior to the commencement of construction of the groynes and marina basin.
16. The Proponent will provide to the Environmental Protection Authority a sum of \$30,000, payable in two instalments, as a contribution towards the study to develop the Environmental Management Strategy for the waters of Warnbro Sound. The first instalment of \$15,000 will be payable within three months of completion of construction of the groynes and marina basin. The second instalment of \$15,000 will be payable 12 months thereafter.

17. The Proponent will implement fertiliser management and monitoring as described in Section 12.8 after construction of the golf course. In the event that Westport canals are constructed to the east of the golf course, fairways and tees adjacent to the canals will be modified by soil amendment to reduce nutrient leakage.
18. The Proponent will arrange any additional unexploded ordnance (UXO) searching as required during the construction period.
19. The Proponent will take all necessary construction measures to mitigate impacts of dust, erosion and noise as resolved with the City of Rockingham and Department of Agriculture. Planting of trees, shrubs and grass for the development will be undertaken as soon as practical following completion of the earthworks.
20. The Proponent will include in the construction contract requirements that the contractor report any archaeological sites discovered during construction and leave undisturbed until advised by the Western Australian Museum.
21. The Proponent will construct fuel storage facilities in the marina above ground and contained within a sealed bund capable of holding the entire tank contents, with refuelling hoses having manually operated nozzle valves and automatic shut-off.
22. The discharge of sewage, hydrocarbons or litter from boats in the marina will be prohibited, and appropriate signs will be placed by the Proponent to inform all users. Waste disposal facilities, including rubbish bins, oil recycling bins and sewer public toilets will be provided around the marina. A sewage pump-out facility will be provided for boats equipped with holding tanks.
23. In addition to the studies referred to in Commitment Nos. 15 and 16, the Proponent will also undertake a study of the use of the shallow bank, in the vicinity of the proposed marina, by whitebait fish, to the satisfaction of the Minister for the Environment.

Following the initial 12 months of studies, the Proponent will, in liaison with the Fisheries Department and Department of Conservation and Land Management, and to the satisfaction of the Minister for the Environment, assess the risk, if any, that the proposed marina would impact upon whitebait fish stocks in the vicinity and on the penguins of Penguin Island respectively. Based upon this assessment and prior to construction of the groynes and marina basin, the Proponent will enter into a legal agreement with the State Government (Fisheries Department) to the satisfaction of the Minister for the Environment to implement appropriate management measures to ensure the continued protection of whitebait. As part of the legal agreement, the Proponent will contribute funds, which may include compensation of professional fishermen, to facilitate the agreed management measures. These contributions will be commensurate with the extent to which the requirement for the agreed measures is directly attributable to impact from the marina.

NB: References above are to sections in the Environmental Review and Management Programme (1988).

Appendix 2

Documents relating to the satisfaction of Condition 14



EPA's COPY

WESTERN AUSTRALIA

MINISTER FOR THE ENVIRONMENT

Mr Martin Bowman
Bowman Bishaw Gorham
PO Box 404
SUBIACO WA 6008

Dear Mr Bowman

**PORT KENNEDY REGIONAL RECREATION CENTRE BECHER
POINT STAGE 1 (167)**

Thankyou for your reports of September, 1993 detailing compliance with those Environmental Conditions and commitments in my Statement of 16 August, 1990 which are required to be satisfied before the commencement of site preparation works.

I am satisfied that these conditions and commitments have been complied with to the extent that site preparation works may now commence.

While these conditions and commitments addressed the issue of a reduction of the Northern Conservation Zone and an increase in the Southern Conservation Zone, that matter is also the subject of an assessment under Section 46 of the Environmental Protection Act, since it amounts to a change from the project assessed by the EPA and approved in my Statement.

In view of this, until advised by me to the contrary following the completion of that assessment, you should protect the whole of the original Northern Conservation Zone from any impacts from site preparation works.

Yours sincerely

Kevin Minson
MINISTER FOR THE ENVIRONMENT

19 OCT 1993

cc CALM

3.4 M11: Sand Dune Stabilisation and Management Programme

The Sand Dune Stabilisation and Management Programme (SDSMP) appears as a separate document (Volume II) to this Progress and Compliance Report.

The SDSMP describes the general principles and overall management strategies to be applied to the various development phases of the Stage I proposal. Detailed rehabilitation plans are included for the first phase, namely site preparation works. Site specific rehabilitation schedules for other phases of Stage I will be provided when design and structure plans for these developments are completed.

The Programme has been developed in consultation with the Departments of Conservation and Land Management, Planning and Urban Development, Agriculture, and Marine and Harbours. Directions for enquires to the review officers from these departments are provided in Table 1.

3.5 M14-1: Northern Conservation Area

Application to the Minister of the Environment to approve the exchange of a portion of land denoted in the project plans as the "Northern Conservation Zone", for a land parcel located adjacent to the Southern Conservation Zone was made in the form of correspondence to the EPA on 6 September (Appendix F).

This application was made after review of the conservation values of the respective land parcels and discussion with the EPA. The application is supported by advice from consultant botanist Mr Malcolm Trudgen (see Appendix G), and the Department of Conservation and Land Management (Appendix H).

Approval from the Minister has been provided, and is enclosed as Appendix I.

3.6 M14-2: Conservation Area Exchange

Application to the Minister for the Environment to exchange a 12.6ha portion of the "Northern Conservation Zone" for an equivalent area to be added to the "Southern Conservation Zone" has been made in M14-1 above.

Following consultation with the EPA and environmental assessment to determine the most appropriate portion of land to be excised for conservation purposes, adjustment of the proposed conservation zones and areas available for development has been made to increase the proposed area of the "Southern Conservation Zone" by 19ha instead of the 12.6ha required under this Condition.

The proposed conservation boundaries are shown in the site plan (Appendix C of M2-2).

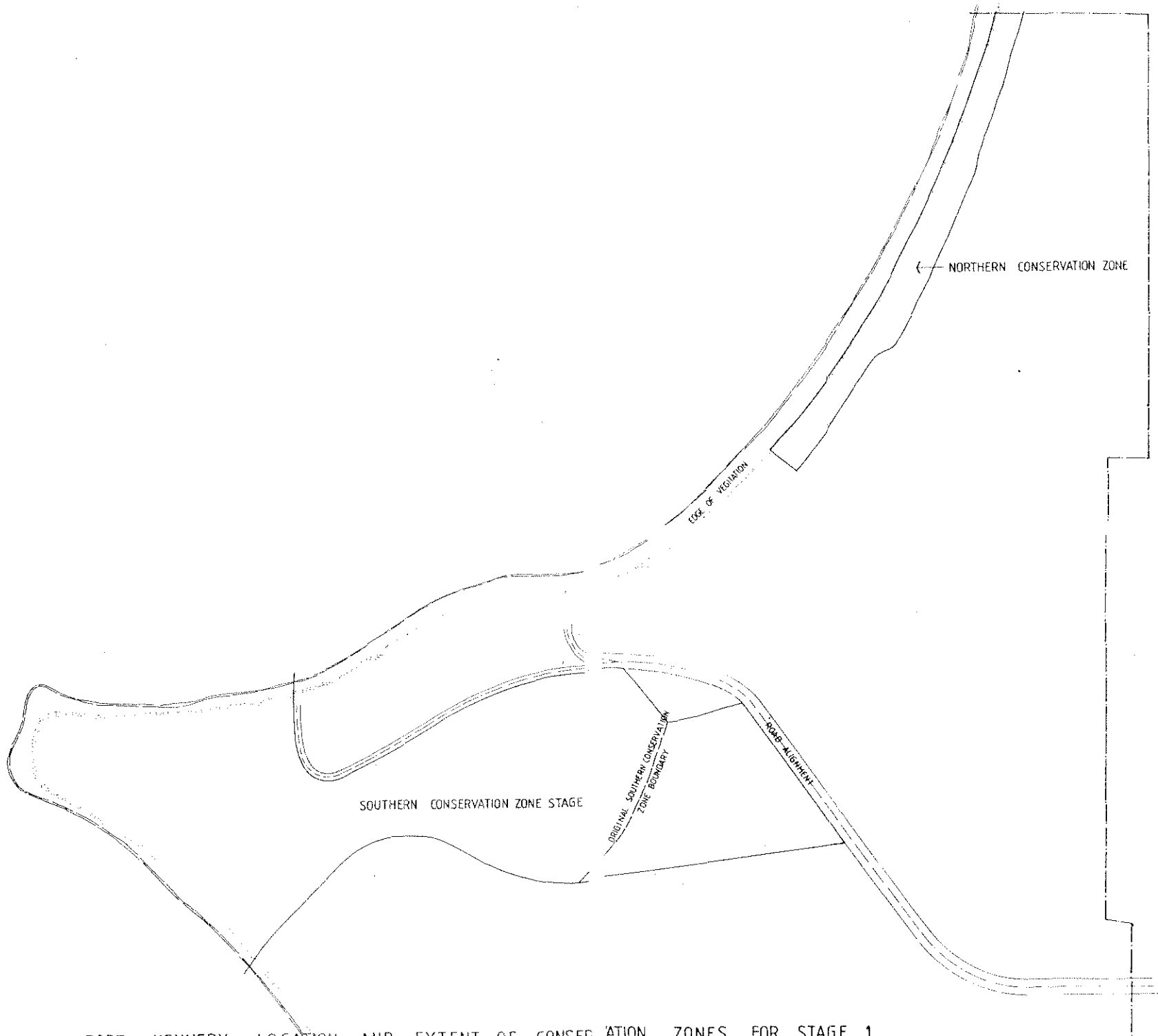
3.7 M9-1: Fire Management Plan

The Fire Management Plan (FMP) is provided as a separate document (Volume III) to this Progress and Compliance Report.

The FMP was developed in conjunction with the City of Rockingham, the Bush Fires Board of WA and the Department of Conservation and Land Management. Comments received from these departments are summarised in correspondence from CALM (see Appendix J), and have been incorporated into the final document.

3.8 M9-2: Implementation of Fire Management Plan

Following discussion with the EPA, and the officers involved in the preparation of the Fire Management Plan, a comprehensive set of contract specifications have been prepared for inclusion into Construction Contracts for site preparation and other construction works. These specifications have been designed to protect the entire project site, particularly the conservation areas, from fire as well as other potential impacts resulting from construction activities.



PORT KENNEDY LOCATION AND EXTENT OF CONSERVATION ZONES FOR STAGE 1.

APPENDIX C

**SITE PLAN
SHOWING LOCATION AND EXTENT OF
STAGE 1 CONSERVATION ZONES**

PORT KENNEDY REGIONAL RECREATION CENTRE

Our Reference: MA3145

6 September 1993

Andrew Baker
Director Pollution Control Division
Environmental Protection Authority
141 St Georges Terrace
PERTH WA 6000

Attention: Audit Box

Dear Sir,

**PORT KENNEDY PUBLIC RECREATION CENTRE
EXCHANGE OF NORTHERN CONSERVATION AREA**

In accordance with Ministerial Condition M14-1, application is made herein to the Minister for the Environment to exchange a portion of the area denoted in the project plans as the "Northern Conservation Area", for a land parcel located adjacent to the approved Stage 1 development area. It is proposed to include the exchanged area of land in Stage 1 of the development. The proposed areas for exchange are shown in Attachment 1.

The rationale leading to the initial creation of the northern conservation, and the benefits of the proposed exchange, are detailed below for your consideration. In accordance with the requirements the Environmental Protection Authority (EPA), the Department of Conservation and Land Management (CALM) has been consulted and has provided advice with regard to the proposed land exchange (Attachment 2).

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Subiaco Perth

Western Australia 6008

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Background

During environmental assessment of the Port Kennedy site during 1987 and 1988, and the subsequent formulation of the Development Plan, those areas of the site which should be retained for conservation were identified.

Conservation area boundaries were proposed in accordance with the environmental values of the site, System Six objectives, and the recommendations of the Coastal Management Plan for the City of Rockingham. A principal objective of locating the conservation area boundaries was to retain a major transect through the relict beach ridge plain, from the coast inland to the eastern boundary, in order to preserve dune sequences of geomorphological significance, and associated vegetation complexes and habitat types. As this transect was located through the southern part of the site, within the Stage II area, a proposal was formulated to conserve the majority of the Stage II development area (minimum 75%) and to focus development within Stage I. This proposal was accepted by the EPA and the then Minister for Environment, and is an integral component of the development and conservation plans for the project site.

During the formulation of the project development plans, it was suggested by EPA officers that it would be beneficial to retain a similar but much smaller transect within the northern portion of the Stage I development area. At that time there were plans to build a canal immediately north of the project area, linking Warnbro Sound with the Westport Canal Project. The canal would form a logical and useful northern conservation area boundary for fire management and control of access into the transect area. This proposal was agreed to by the proponents, leading to the delineation of the area shown on Attachment 1 as the 'Northern Conservation Area'.

During the EPA assessment of the Port Kennedy proposal, the Westport Canals project was abandoned in favour of more traditional residential housing. As this landuse would not provide such a useful boundary to a conservation area, it was considered preferable for the northern area to be approved for development in exchange for conservation of an area of equivalent size within Stage I. This exchange area was to occur at the southern boundary of the site, contiguous with both the southern conservation area (within Stage I) and the major conservation area within Stage II.

It was further considered that a larger, consolidated conservation area in the south of the site would be preferable to the earlier proposal for separate northern and southern zones. This is

principally because of the benefit of a lower boundary length to area ratio, and the increased ability to manage land within this consolidated southern zone.

Environmental Characteristics of the Exchange Areas

To confirm the technical merit of the proposal prior to this formal application for land exchange, a confirmatory survey of the two land parcels has been carried out by the specialist botanist who conducted the original survey in 1988. The survey led to the following conclusions :

a) Northern Conservation Area.

- The specialist botanical survey carried out in 1988 concluded that the area does not support any rare or priority plant species;
- Plant species which occur in the area are common within the coastal vegetation complexes of the region;
- The vegetation structural formations in the proposed exchange area are replicated in other parts of the site which will be conserved;
- The condition of the vegetation has been affected by frequent fire, weed invasion, brush slashing for the UXO survey work, and is dissected by a series of sand tracks;
- The vegetation complexes of the Q2 dunes and OaAc shrubland are represented elsewhere, and are significantly more common than the ephemeral wetlands which are contained within the proposed exchange area. Please refer to correspondence from consultant botanist Mr M. Trudgen (Attachment 3).

b) Proposed Southern Exchange Area

- The area contains the north -western extent of a linear ephemeral wetland which extends to the south -east into the Stage II Conservation Area (southern conservation area), as well as dune formations with good drainage;

- the vegetation includes *Acacia rostellifera* vegetation complex in good biological condition, and in varying stages of regrowth after fire, as well as some stands of *Melaleuca raphiophylla* (paperbark) within the ephemeral wetland;
- There is a diversity of soil types, moisture regimes and vegetation structures, due to the presence of ephemeral wetland landform within the relict beach ridges, and therefore habitat value is considered to be greater than in the northern conservation zone.

Summary of Benefits

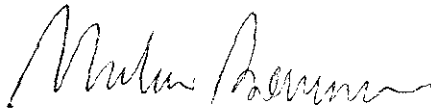
The benefits of proceeding with the proposed land exchange are summarised as follows:

- The current proposals for housing developments at the northern boundary of the site would render appropriate management of the present northern zone more difficult than was initially contemplated when there was to be a major canal at the northern boundary to control access and act as a major fire break;
- Consolidation of conservation areas into a smaller number of larger areas is fundamentally beneficial;
- the "boundary length to area ratio" for conservation areas within the project area will be reduced, yielding management benefits;
- On a regional basis, wetland habitats are more valuable for conservation than Q2 dunes and associated vegetation;
- An additional area of linear ephemeral wetland will be conserved;
- the exchange area has been less impacted by previous uses and fire/weed invasion and is in better general biological condition;
- The project access road will form a good northern boundary for access and management control;
- Fire management plans will be more readily implemented and better controlled within a larger reserve.

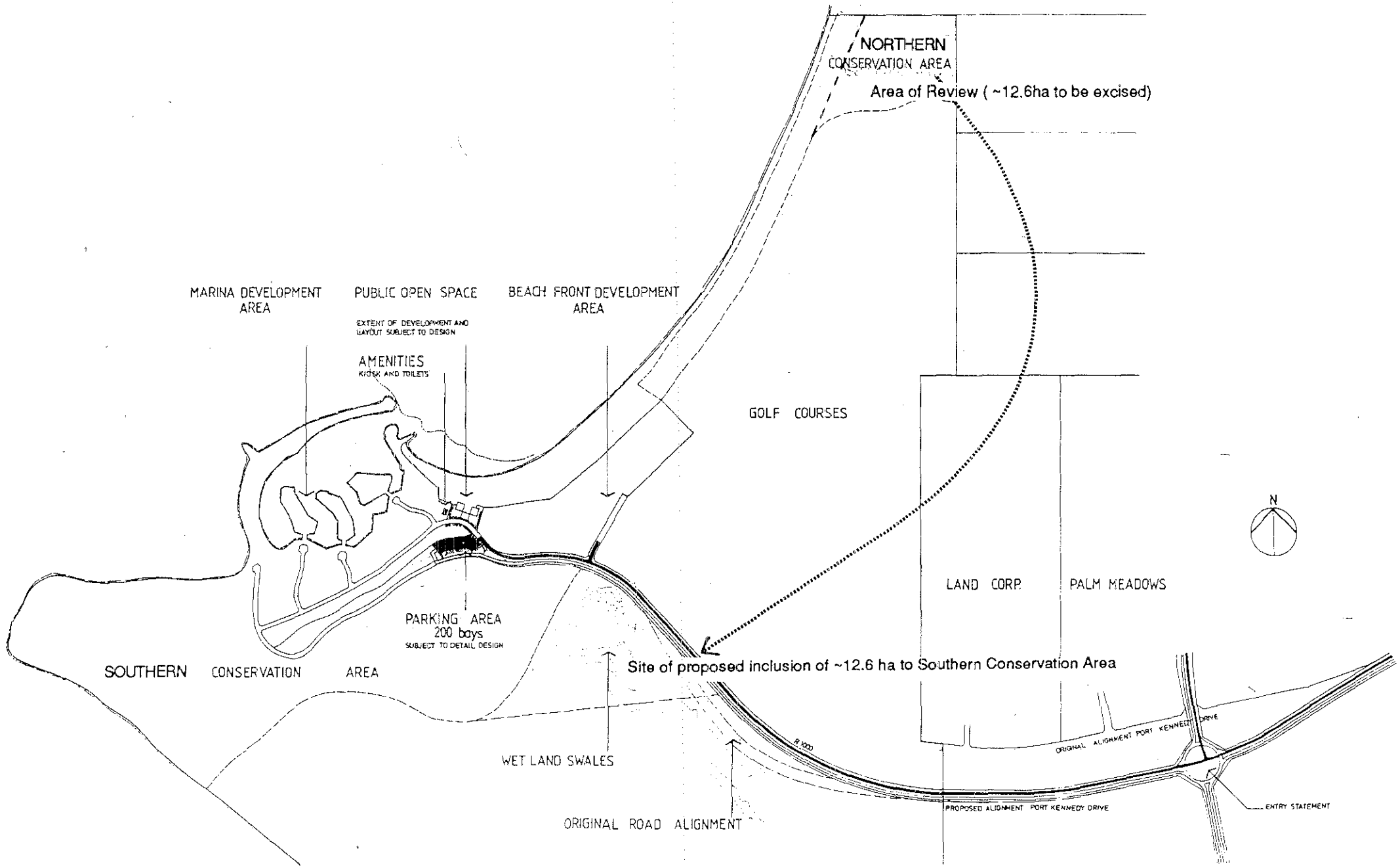
We trust the above information is to your satisfaction and that the proposed conservation area exchange will be endorsed. However in the meantime should you have any queries or require further clarification of any aspect, please do not hesitate to contact the writer.

Yours sincerely

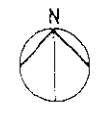
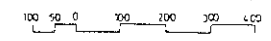
BOWMAN BISHAW GORHAM



MARTIN BOWMAN



PRELIMINARY PLAN DEVELOPMENT PHASE 1:1 ENTRY ROAD AND PUBLIC AMENITIES



2023/03/15

Malcolm Trudgen
Consultant Botanist

90 Arkwell Street
Willagee
Western Australia
Australia 6156
(Tel. 09/3375334)

Mr Martin Bowman
Bowman Bishaw Gorham
294 Rokeby Rd.
Subiaco
Western Australia

24 August 1993

Dear Martin,

Conservation area exchange: Port Kennedy

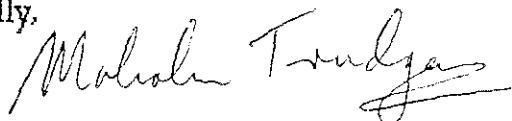
The important points with regard to the proposed exchange are (presuming the total area remains the same):

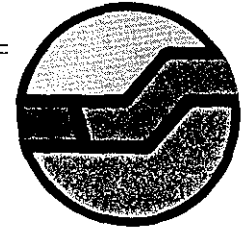
1). The relative value of the vegetation types involved. While areas with Acacia cochlearis (e.g unit OaAc) as one of the dominant shrubs are not very common on the coastal dunes, they are significantly more common than the linear wetlands found at Port Kennedy, which are restricted to that area. Areas of Q2 dune vegetation similar to that found at Port Kennedy are fairly common both north and south of Port Kennedy. Consequently it would be reasonable to exchange an area including part of the unit OaAc and part of the Q2 dunes for one including part of the linear wetlands.

2) The proposal would give one larger area for conservation of vegetation on the site rather than two smaller areas. This should enable better maintenance of the vegetation and flora values found in a larger area due to an increased boundary to area ratio (provided quality of management is maintained).

For these reasons I would support the proposed conservation area exchange.

Yours faithfully,





Please address all enquiries to:

Your Ref:

Our Ref:

Enquiries:

┌ Mr Martin Bowman ┐
Bowman Bishaw Gorham
Environmental Management Consultants
P O Box 404
SUBIACO W A 6008
└ ┘

Dear Mr Bowman

PORT KENNEDY CONSERVATION AREA EXCHANGE

Your memo of 12 August refers.

The following comments are made in relation to the proposed exchange of the "Northern Conservation Zone" for an area adjoining and east of the "Southern Conservation Zone".

1. One of the vegetation complexes present in the Northern Conservation Zone (NCZ), the Q2 dunes, is not particularly well represented in the Port Kennedy area, but is well represented in Yalgorup National Park (Trudgen, 1989)

Another complex (OaAcl in the relict foredunes) is also not well represented at this location but is restricted to the area between Rockingham and Mandurah and not in any secure conservation reserves.

2. *Acacia cochlearis*, which is found in the NCZ only in the OaAcl unit, is widely distributed within the State from Eneabba to Madura.
3. The linear wetlands found in the proposed extension to the SCZ are important feeding areas for birds and contain a micro mosaic of pure stands and mixtures of wetland species.
4. The extension of the SCZ to the east would enhance the east-west transect value of the SCZ. The size of this enlarged reserve also enhances its viability in general terms by comparison with the isolated NCZ.
5. Vegetation complexes in the proposed SCZ extension appear to provide superior habitat for the Southern Brown Bandicoot (*Isodon obesulus*) a species gazetted rare under the Wildlife Conservation Act.

SUMMARY AND RECOMMENDATION

On balance it would appear that the proposed extension to the SCZ offers greater potential benefit as a conservation reserve than the NCZ. As the proposed golf course design in the northern area aims to retain native vegetation between the fairways and because the foredune zone of the NCZ is excluded from the exchange (Ministerial Condition No. 14), the Department of Conservation and Land Management supports the proposed exchange.

Yours sincerely



Syd Shea
EXECUTIVE DIRECTOR

3 September 1993

Copy: Environmental Protection Authority, Attention: Sharon Gray



Messrs Sheehan & Lukin
Directors
Fleuris Pty Ltd
294 Rokeby Road
SUBIACO WA 6008

Your ref:
Our ref:
Enquiries: Audit Postbox
S Gray

Dear Messrs Sheehan & Lukin

**PORT KENNEDY REGIONAL RECREATION CENTRE BECHER
POINT STAGE 1 (167)**

I am writing about the above project to clarify issues raised at the meeting you had with officers of the Environmental Protection Authority, 2 June, 1993.

I understand site preparation works are planned to commence by the end of August, 1993, and that you are aware there are a number of Conditions and Commitments set for this project prior to site preparation works and prior to development.

In my view, 'site preparation works' means establishing facilities necessary for access to the site, for preparatory surveying and site assessment for the subsequent major development phase. This includes road access to the site in accordance with the principal road entry as designed in the proposal, development of a suitable works depot area, public kiosk and toilets, power and water reticulation so as to enable orderly site design and assessment. It would exclude major earthworks, road construction, infrastructure development or construction associated with the main development phase.

From the statement issued by the Minister for the Environment for this project, I believe it is necessary prior to site preparation works to fulfill those Conditions and Commitments designated in the attached Audit Table as

- M2-2 Conservation zones and natural vegetation areas
- M3-1 Coastal geomorphology
- M11-1 Sand dune stabilisation and management programme
- M14-1 Northern Conservation Zone
- M14-2 Area exchange
- P9-1 Fire Management Plan
- P9-2 Fire Management Plan

I request that a report be submitted to the Environmental Protection Authority prior to site preparation works, setting out the actions taken to fulfill each of these conditions. The report will be made available to the public to provide accountability on compliance with the environmental conditions and commitments for the project. I also request that a plan for site preparation works be submitted before they are commenced.

I have attached some guidelines to assist you in preparing the report.

Please also find enclosed a revised Audit Table which incorporates the above clarifications and other amendments considered appropriate. The original Audit Table is also enclosed with annotations to show the revisions which have been made. Please inform me as soon as possible whether you accept the revised Audit Table.

This project is sensitive in terms of public interest and it is important that good communications are maintain between yourselves and the Environmental Protection Authority during its implementation.

Thank you for your attention to these matters. If you have any queries regarding this letter please contact Sharon Gray on 222 7145.

Yours sincerely



Andrew Baker
DIRECTOR
POLLUTION CONTROL DIVISION

18 June, 1993

cc Bowman, Bishaw, Gorham

Appendix 3

**Proponent's environmental review document for change of
proposal**

**PORT KENNEDY
REGIONAL RECREATION CENTRE**

**PROPOSAL FOR CHANGES TO ENVIRONMENTAL CONDITIONS
TO ALLOW FOR CHANGES
TO STAGE 1 AND STAGE 2 BOUNDARIES**

November, 1993

Report No: MA3190/S46

1.0 PURPOSE OF SUBMISSION

The Port Kennedy Regional Recreation Centre proposal was approved by the Minister for the Environment, subject to a number of environmental conditions, on the 16th August 1990.

Condition 1 of the Minister's approval was as follows,

"The proponent shall adhere to the proposal as assessed by the Environmental Protection Authority "

Condition 14 of the Minister's approval was as follows,

"Prior to construction, the proponent shall review the conservation value of the proposed "Northern Conservation Zone" (ie in the northern part of the site, but excluding the foredune zone) in consultation with the Department of Conservation and Land Management (CALM).

If in the opinion of the Minister for the Environment it would be environmentally preferable to exchange the northern area for an equivalent area to be added to the "Southern Conservation Area", then the proponent shall adjust accordingly the proposed conservation zones and areas available for development, to the satisfaction of the Minister for the Environment".

Condition 14 recognised the consideration given by the proponent, in consultation with the EPA, to the environmental benefits of allowing development of the "northern conservation area" in exchange for the addition of an equivalent area of land to the Southern Conservation Area. This consideration took place after the release of the EPA report (Bulletin 398) but before approval by the Minister for the Environment and formulation of the Minister's conditions of approval.

The proponent has completed technical work which has examined the merits of this area exchange as required under Condition 14, and has concluded the exchange to be environmentally desirable. The findings and conclusions of this work have been reported

to the EPA in the proponent's Environmental Progress and Compliance Report (Bowman Bishaw Gorham October 1993 Report No MA3145). The EPA has agreed with the proponent's findings, leading to approval for the area exchange from the Minister for the Environment in a letter to the proponent's consultants dated 19th October 1993.

However, now that the Minister for the Environment has approved the boundary change, Condition 1 must also be changed to acknowledge the new boundary.

This submission requests an appropriate change to Condition 1, and also demonstrates that the boundary change proposed here will not compromise or limit the achievability of other relevant environmental conditions.

2.0 RATIONALE FOR AMENDMENT

In order to achieve compliance with Condition 14 of the Minister for the Environment's approval, 12.6ha of land suitable for conservation was required to replace that excised from the northern conservation zone. The criteria applied to the selection of land were as follows:

- The area needed to be of high conservation value and, preferably,
- The area needed to be adjacent to the southern conservation zone to reduce the boundary to area ratio of the conservation areas.

As described in the ERMP, and in keeping with the overall environmental philosophy of the project, the area designated for Stage 1 development is the most degraded land on the site. Therefore, any further allocation of Stage 1 land for conservation purposes would not be in accordance with the intention of the conservation land exchange. Selection of a high quality wetland within the Stage 2 area adjacent to the Southern Conservation Zone satisfied the two above criteria.

As set out in the previous section, technical responses to Condition 14 have been undertaken by the proponent in consultation with the Department of Conservation and Land Management (CALM) and reported to the EPA. This has led to confirmation by the Minister for the Environment that Condition 14 has been met, in a letter to the proponent's consultants dated 19th October 1993 .

However, this exchange requires a realignment of a portion of the boundary between Stages 1 and 2. In the course of carrying out this partial boundary realignment, the proponent has been cognisant of the need to maintain compliance with condition 17 of the Minister's approval, which is as follows ;

"...not less than 75% of the Stage 2 area to be set aside for conservation purposes..."

Clearly with the proposed shift in the boundary, it is necessary to ensure that no less an area will be conserved. The tabulated data set out below summarises the relative areas of stages 1 and 2, and the proportions of these areas which are to be conserved.

**Comparison of land area allocated for conservation and development -
original proposal vs amended proposal**

Areas	Proposal as assessed by the EPA (ha)	Conservation land exchange with original boundaries (ha)	Amended proposal (adjusted boundaries) (ha)
Stage 1			
Conservation	105.6 (33%)	91.7 (28.7%)	110.5 (32.5%)
Total	320	320	340
Stage 2			
Conservation	307.5 (75%)	321.4 (78.4%)	302.6 (77.6%)
Total	410	410	390
Total Conservation Area (Stage 1 and Stage 2)	413.1	413.1	413.1

The tabulated data represents a revised commitment by the proponent, that with the proposed change in the Stage 1/Stage 2 boundary and the exchange of conservation zones, a greater proportion of the new Stage 2 area (302.6ha or 77.6% of the total 390ha) will be conserved. The data demonstrates that the intent for at least 75% of the original Stage 2 to be conserved is preserved by the boundary changes, and also confirms that the total area of land to be conserved over the whole site has not diminished.

In addition to the environmental benefits which result from the conservation area exchange, the resultant boundary adjustment achieves consistency with the Stage 1/Stage 2 boundary which is delineated in the *Port Kennedy Development Agreement Act 1992*. Schedule 1 of the Act defines a more southerly location of a portion of the Stage 1/Stage 2 compared to the boundary defined in the ERMP, in anticipation of the land exchange between northern and southern conservation areas, as previously discussed.

Figures 1 to 3 illustrate the boundary alignments shown in the ERMP, in Schedule 3 of the *Port Kennedy Development Agreement Act 1992*, and as recently approved by the Minister of the Environment.

3.0 MINISTERIAL CONDITIONS: CURRENT STATUS AND COMPLIANCE

The environmental compliance requirements as specified by the EPA for the first phase of the project "Stage 1.1 - Site Preparation" have been completed. Documentary reporting of the outcomes of this work has been submitted as a Progress and Compliance Report to the EPA and the Minister for the Environment. Advice from the Minister indicating that compliance with these requirements has been met was obtained on 19th October 1993.

Whilst the environmental conditions required to be satisfied prior to the commencement of site preparation works pertain to approval for Stage 1 only, it has been considered important at the outset to initiate the development and implementation of management plans to enable protection of the whole site. As such, any adjustment to the Stage 1/ Stage 2 boundary does not reduce or affect the environmental management of any area of land.

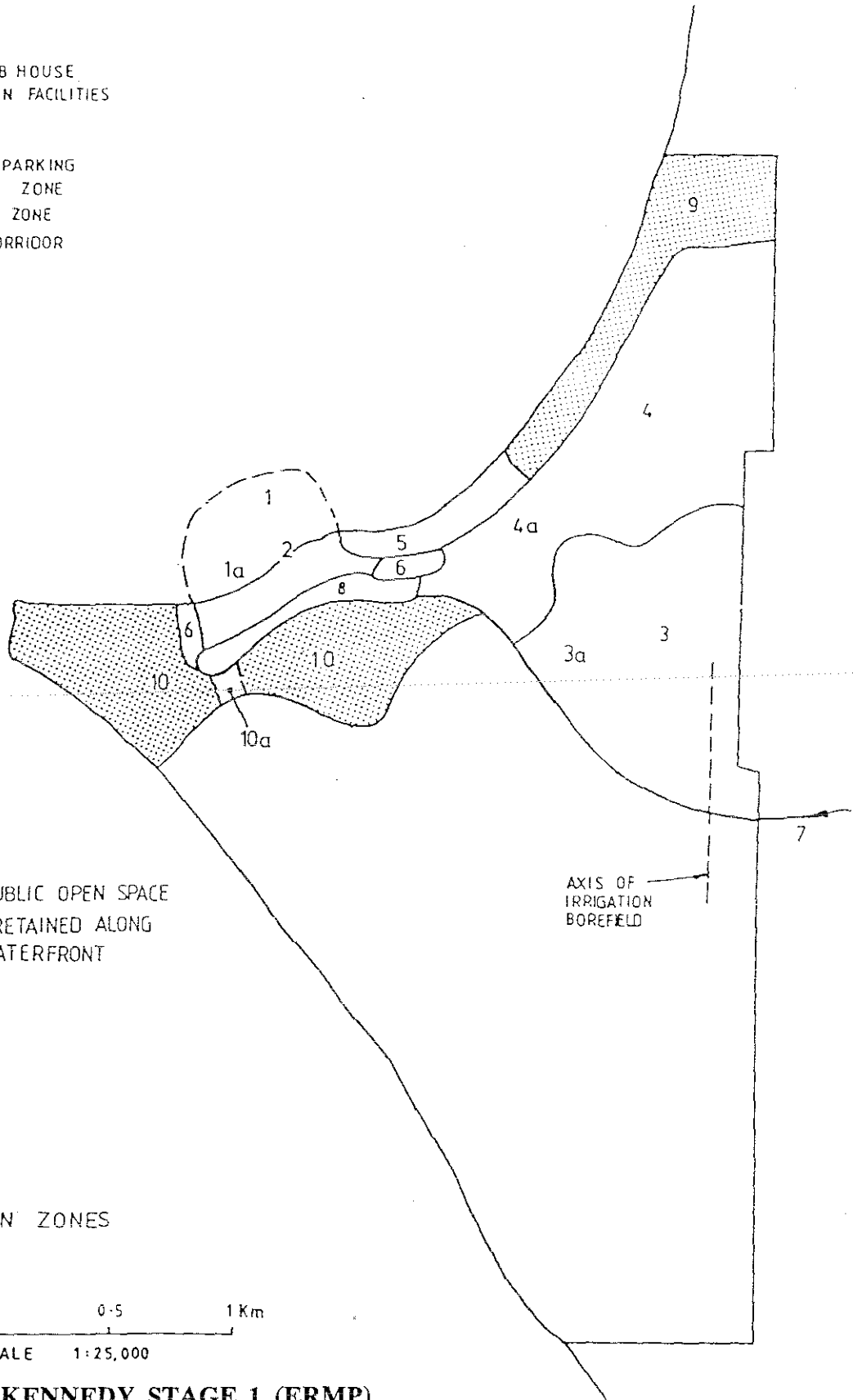
There is a requirement for additional environmental compliance requirements to be addressed prior to the commencement of further stages of the project, the next of which will be the "Construction" phase. Appropriate technical investigations are underway, including the development of a Conservation Management Plan which will address interim environmental protection for the entire site until the development or formal dedication for conservation of any area proceeds. These studies will be completed and reported in due course, in accordance with the Minister for the Environment's conditions of approval.

4.0 RECOMMENDATIONS

It is recommended that Condition 1 be amended to confirm the changes in the location of the boundary between Stages 1 and 2, and the new locations of the conservation zones as approved by the Minister for the Environment.

ATTACHMENTS

- 1. MARINA
 - 1a MARINA RENTAL ACCOMMODATION
- 2. TOWN CENTRE/ ADMINISTRATION
- 3. PUBLIC GOLF COURSE
 - 3a CLUB HOUSE
- 4. PRIVATE GOLF COURSE
 - 4a RESORT HOTEL/ CLUB HOUSE
- 5. PUBLIC BEACH RECREATION FACILITIES
- 6. RENTAL ACCOMMODATION
- 7. APPROACH AVENUE
- 8. TEMPORARY STAGE 1 CARPARKING
- 9. NORTHERN CONSERVATION ZONE
- 10. SOUTHERN CONSERVATION ZONE
 - 10a FUTURE ACCESS CORRIDOR



NOTES

- 1. ALL BEACHES TO BE PUBLIC OPEN SPACE
- 2. PUBLIC ACCESS TO BE RETAINED ALONG ALL OF THE MARINA WATERFRONT

KEY



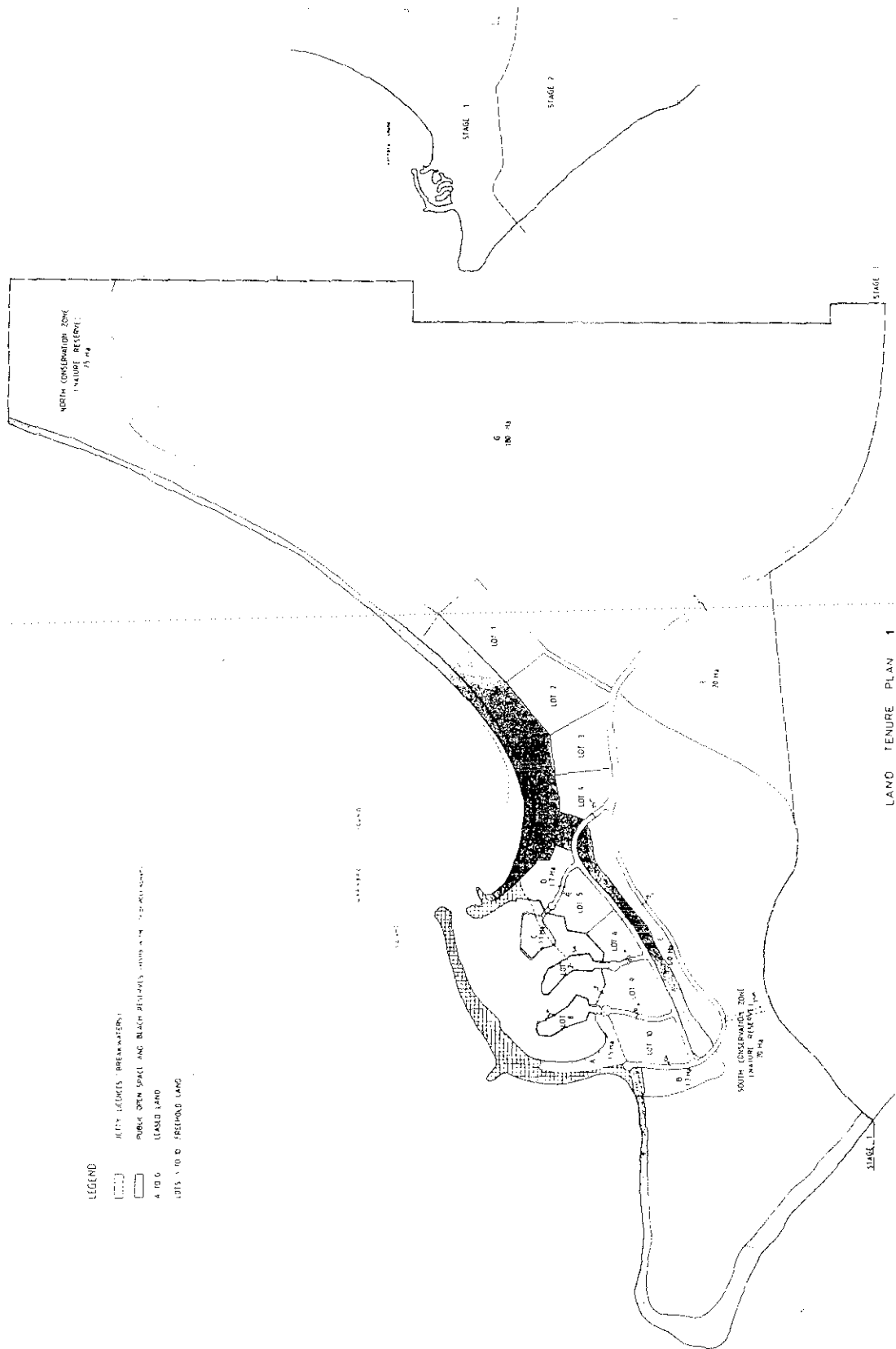
CONSERVATION ZONES

0 0.5 1 Km
SCALE 1:25,000

FIGURE 1. PORT KENNEDY STAGE 1 (ERMP)

PREPARED BY: BINNIE & PARTNERS PTY LTD





LAND TENURE PLAN 1
FIGURE 2. PORT KENNEDY STAGE 1 (Port Kennedy Development Agreement Act, 1992)

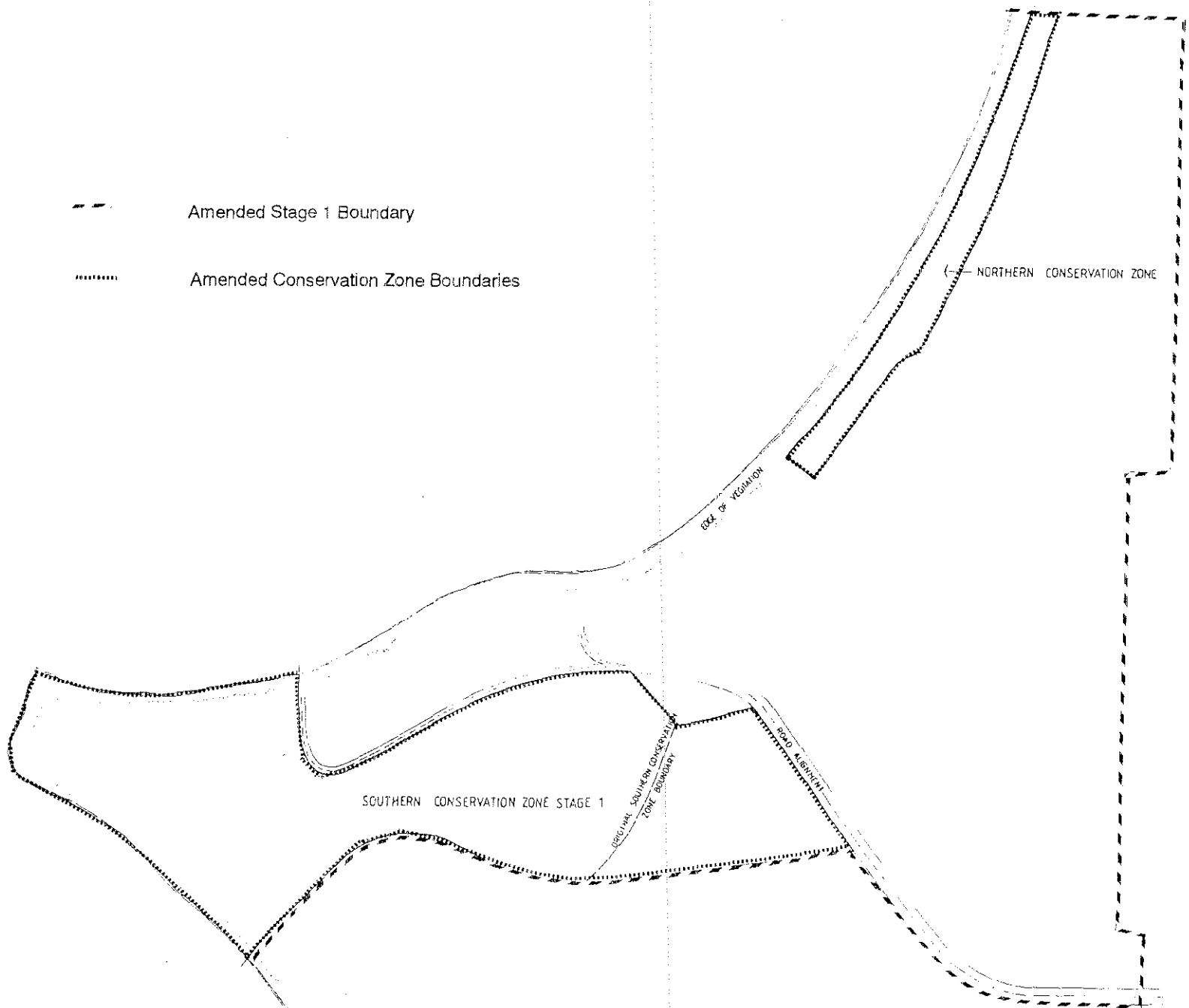


FIGURE 3. AMENDED PORT KENNEDY STAGE 1 BOUNDARIES

Appendix 4

Proponent's response to issues raised in submissions

BOWMAN BISHAW GORHAM

ENVIRONMENTAL MANAGEMENT CONSULTANTS

Our Reference: MA3190/S46

27 January 1994

R.A.D Sippe
Director Evaluations Division
Department of Environmental Protection
141 St Georges Terrace
PERTH WA 6000

Attention: Mr J. Malcolm

Dear Sir

RE: PORT KENNEDY REGIONAL RECREATION CENTRE 843

Proponent Responses to Public Submissions

Application for changes to Environmental Conditions to allow for approved changes to Stage 1 and Stage 2 boundaries.

1.0 INTRODUCTION

The application to change Environmental Conditions for this project was submitted to the Department of Environmental Protection (formerly the Environmental Protection Authority) in November, 1993. This correspondence provides responses to Public Comments in regard to the application by Fleuris Pty Ltd under Section 46 of the *Environmental Protection Act, 1983* for a minor change to the Environmental Conditions which the Minister for the Environment has set for the Port Kennedy Regional Recreation Centre (PKRRC), otherwise referred to in this document as "the Project".

DEPARTMENT OF ENVIRONMENTAL PROTECTION	
1 - FEB 1994	
File No 1	110193 Initials JMA
File No 2	Initials

1298 Hay Street
West Perth
Western Australia 6005
PO Box 946 West Perth
Western Australia 6872
Tel: (619) 481 8588
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72672

Evaluation of the comments indicates there have been misunderstandings and/or errors of interpretation in regard to both the purpose of the application, and the rationale for changes to the boundary between Stages 1 and 2.

The most obvious are:

- 1) That the application for a change to Ministerial Condition M1-1 is for approval for the land area exchange. The application for exchange of conservation areas was undertaken in September 1993 in accordance with requirements of the Minister for the Environment, embodied in the DEP's audit specifications for the project. Full documentation of the proposal was presented at that time, and approval was granted by the Minister for the Environment in a letter to the consultants dated on 19/10/93.

The purpose of the application is to seek a change to Ministerial Condition M1-1 in order to approve the boundary change to Stage 1 and Stage 2 necessarily entailed as a result of the previous approval for land area exchange. The DEP has advised that an application under Section 46 of the *Environmental Protection Act 1986*, is the appropriate procedure, and that the application should also demonstrate that the intent for at least 75% of the original Stage 2 to be conserved is preserved by the boundary changes, and that the total area of land to be conserved over the whole site has not diminished.

- 2) That changes in the boundaries were instigated by, and for the benefit of, the developer. Review of environmental audit table (items M14-1, 14-2 and M2-2) demonstrates that the land exchange was directed by the Minister for the Environment on advice from the DEP, for the purpose of improving the quality of land to be reserved for conservation purposes. The proponent was therefore legally obliged to make these changes to project design. The proponent is additionally directed to carry out the land area exchange by provisions of the *Port Kennedy Development Agreement Act, 1992*. At the the proponent's initiative, 6.1ha additional to legal requirements has been given up for conservation purposes.
- 3) That the environmental resources contained within the conservation areas have been diminished as a consequence of the land exchange. In fact, technical evaluation

shows that values contained within the reserves will be enhanced as a consequence of the area exchange. This was the purpose for which the land exchange was specified, with the scientific desirability of the land exchange supported by advice from CALM and specialist botanical and geomorphological evaluation.

In addition, instruction in regard to the land exchange specified that equal land areas were required to be exchanged within Stage 1. In fact, an additional 6.1ha has been added to conservation reserves in Stage 1.

- 4) Several submissions appear to be based on the premise that all of Stage 2 was to be available for conservation purposes. The Minister for the Environment's approval, and the *Port Kennedy Regional Development Agreement Act, 1992* both specify that 25% of Stage 2 is available for development subject to evaluation and approval under the *Environmental Protection Act, 1986*. This has been reported in all public documents pertaining to the Port Kennedy Project which have appeared since 1989.

Of importance to note is that under the *Port Kennedy Regional Development Agreement Act, 1992*, the area added to the southern conservation zone was to be allocated as Crown land available to be leased to the developer upon the completion of the project, and was not designated for conservation purposes. The conservation area land exchange as undertaken has ensured protection of an additional wetland on the Port Kennedy site.

- 5) The term "Warnbro high dune system" has appeared in the comments, and it is claimed that this feature will undergo significant physical disturbance. Whilst this is not a scientifically recognised term, the area referred to by this term is evident by reference to the topography. This foredune area is entirely conserved within the Northern Conservation Zone and is not affected by the land area exchange, which relates to the lower land east of the "high dunes".

COMMENTS AND RESPONSES

1.0 VALUES OF THE NORTHERN CONSERVATION ZONE

1.1 Comment

The Northern Conservation Zone contains a complete undisturbed, east-west transect of the Warnbro high dune system, which is of considerable scientific (geological and geomorphological value). It is the only undisturbed transect remaining in public ownership. The high dunes have been claimed to be of international significance and a report commissioned by the Australian Heritage Commission (AHC) called for a transect of the high dunes to be reserved. The AHC considered the area qualified for listing on the register of the National Estate by virtue of its scientific and flora values, and these values have not been recognised in this proposal. Development of the dunes would cause irreversible damage.

1.1 Response

The landform area referred to as "the Warnbro high dune system" is not a part of the conservation land exchange, will remain within the Northern Conservation Zone and will be vested in CALM as part of the proposed "Port Kennedy Scientific Park".

In addition to conserving the area referred to as the "Warnbro high dune system", substantial undisturbed transects through dune sequences of greater geomorphic development and age will remain in public ownership and will be conserved within the Stage 2 Conservation area of the proposed "Port Kennedy Scientific Park".

Ministerial Condition 14-1 requires the proponent to confirm the conservation value of the land exchange area prior to application for the land exchange. Geomorphological and botanical investigations have been carried out by specialist consultants leading to the following conclusions;

- The area to the east of the "Warnbro high dunes" consists of low terrain of compressed, disturbed and reworked dune sands. Other dunes sequences to be conserved in the Stage 2 conservation area are considered to have greater scientific and educational value in addition to their greater ease of interpretation.

- The principal scientific value of any of the dune sequences resides at depth in the topographic position of the contact between the Safety Bay Sand and the Becher Sand stratigraphic units. Correlation of this position with geological age data which can be measured by radio carbon dating of sediment materials at the contact, gives evidence of historical sea level position. This contact occurs at significant depth below the present land surface and therefore will not be disturbed by development.
- Further botanical surveys of the land exchange areas have confirmed the technical desirability of the land area exchange.
- In contrast to the 12.6ha excised from the northern conservation area, the 17.5 ha added to the southern conservation zone as land exchange has been assessed by specialist scientists, CALM and the DEP. Due to the quality of the wetlands and vegetation contained therein, this areas is considered to have significantly higher conservation values than the northern land area.

2.1 Comment

The proposed land exchange between Stage 1 and Stage 2 that results from the changed boundaries is inequitable because although of equal area, the economic value of the land in the NCZ to be exchanged far exceeds that of the land offered in consideration. The proponent is further advantaged by foregoing land of higher development costs in return for land of lower development costs. Should the land exchange proceed then the proponent should compensate in some way for the net loss to the State.

2.1 Response

The approved land exchange is not of equal area. Whilst 12.6ha of land, has been excised from the Northern Conservation Zone, an additional 17.5ha of land has been incorporated into the Southern Conservation Zone.

Comment regarding the economic value or development costs of the land is speculation, and does not constitute an environmental matter.

3.0 LAND EXCHANGE WITHIN STAGE 1

3.1 Comment

If a land exchange is to occur it should be confined to land within Stage 1. This may be achieved by re-aligning the access road (which should remain the boundary of the Southern Conservation Zone) 400 metres northwards, which would protect all the important Becher wetlands and be fair exchange for the loss of the scientifically important land in the NCZ. This would rectify the currently unsatisfactory position for the access road, which passes between important, associated wetlands.

3.1 Response

The conservation area land exchange is confined to Stage 1, as this is referred to in the *Port Kennedy Development Agreement Act, 1992*.

Under Ministerial Condition M14-2, the proponent has been legally obliged to conduct the land exchange in the areas designated by the DEP and the Minister for the Environment.

The land exchange in the locations designated ensures that a wetland area which would have been available for development, is now protected within a gazetted conservation zone.

As a consequence of this exchange, the developer has lost 6.1ha of land which would have been available for development in Stage 1.

The position of the access road in relation to the geomorphic units, vegetation values and wetland habitat has been investigated in accordance with environmental conditions and has been accepted by the DEP and the Minister for the Environment.

3.2 Comment

It is totally inappropriate to exchange land that, although of conservation value, was not addressed in the Environmental Review and Management programme and not part of environmental approval for Stage 1. The proposed land exchange is illusory because it involved exchange of a conservation area in Stage 1 for a conservation area in Stage 2. Both

areas should be conserved. The current Ministerial conditions require at least 75% of Stage 2 be conserved so it is likely the important wetlands would be conserved in any case. Any land exchange should occur entirely within Stage 1.

3.2 Response

All parts of the site were addressed in the ERMP. In contrast to the comment, the exchange of land in the areas designated was a condition of approval for Stage 1. The land exchange has taken place within Stage 1 as this is defined in the *Port Kennedy Development Agreement Act, 1992*.

Additional environmental appraisal and approval for the land exchange areas was specified by the Minister for the Environment's Conditions of approval for the project, granted on 19/10/93.

The 20ha in question was not available for conservation purposes prior to the land exchange proposal, as it was designated Crown land to be available for lease to the developer once the project was complete. Under the Ministerial condition, 12.6ha was to be made available to conservation purposes, with 7.3ha remaining for development. Following the conservation land exchange, and in consideration of the conservation value of the area, the proponent has made available 18.8ha of wetlands to be included into the proposed "Port Kennedy Scientific Park", with only 2.5ha to be available for development.

3.3 Comment

The question was raised whether the area within Stage 1 to be swapped by the proponent is already a leasehold conservation area; - that is already effectively part of the Southern Conservation Zone (SCZ), in which case the land exchange is definitely not environmentally desirable. Notwithstanding this, the land in question should not be part of the proponent's leasehold conservation area as it was not assessed by the DEP and resulted from an error during passage of the Port Kennedy Development Agreement Bill through Parliament. That is, this area should not even be available for exchange.

3.3 Response

The various components of this comment have previously been addressed above. In brief:

The southern area subject to the land exchange was not part of the Southern Conservation Zone. For the purposes of environmental approval, the area was considered to be part of Stage 2 by the Minister for the Environment, and hence was subject to consideration for development under the parliamentary agreement made to the proponent for 25% of Stage 2. For the purposes of development approval however, the area was considered to be Stage 1, but was designated to be leased to the proponent once the project was complete. Under the current situation, this area is guaranteed protection through vesting in CALM as Stage 1 of the proposed "Port Kennedy Scientific Park"

The areas in question were assessed by the DEP under Ministerial Conditions M14-1 and M14-2 during the approval process for commencement of the project, and approved by the Minister for the Environment on the 19/10/93.

The Minister for the Environment's conditions requiring that the land exchange be undertaken were drafted prior to the passing of the *Port Kennedy Development Agreement Act, 1992*. The proponent was obliged to investigate and undertake the land exchange irrespective of the Act. Given that the Act was subject to reading in two houses of Parliament prior to being passed, it is unlikely to contain a major "error" as claimed. The boundary designated in Schedule 3 of the Act anticipates the Minister for the Environment's desire for the land exchange.

3.4 Comment

It is appropriate, in seeking change to Condition 1 of the environmental conditions, to review all environmental conditions. This would provide an opportunity to remedy errors in the DEP assessment report and also to adopt the recommendations of the Port Kennedy Development Appeals Committee to reserve all of Stage 2 for conservation, and fence the conservation areas. This is the policy of the current Government which claims it is committed to the establishment of Australia's first Scientific Park at Port Kennedy.

3.4 Response

The Ministerial environmental conditions are recent, and were prepared and released in 1993 some 4 years after the publication of the DEP assessment report. Over this time, thorough review of the project has been made by the DEP. As a consequence, development of the Port Kennedy Project will require compliance with over eighty five environmental conditions, making it the most stringently controlled land development in the history of WA. These conditions are also incorporated into the *Port Kennedy Development Agreement Act, 1992.*, which has been required to pass through two houses of Parliament. The proponent considers that considerable review, assessment, public consultation and effort has gone into developing the recent environmental conditions, and that further review is unwarranted.

The current government is legally obliged to comply with the *Port Kennedy Development Agreement Act, 1992*, which allows for 25% of Stage 2 to be excised for development. Under the Conservation Management Plan to be prepared for the site, the areas reserved for conservation will be fenced and are proposed as the "Port Kennedy Scientific Park".

3.5 Comment

The proposed land exchange is unnecessary as it is more appropriate to retain the land earmarked for exchange within Stage 2, for consistency of land use. There is benefit in the proposal only if this land is included in the Scientific Park.

3.5 Response

The land in question is to be included in Stage 1 of the proposed "Port Kennedy Scientific Park".

4.0 PROVISIONS NEEDED IN THE NORTHERN AREA

4.1 Comment

The northern beaches are a very popular area and land exchange involving the NCZ needs to address public access to the beaches and the existing car parks.

4.1 Response

The land exchange does not affect any commitment or obligation by the proponent to address the issue of public access to the northern beaches. In fact, the excision of land from conservation zoning increases the possibility of constructing a car park to enhance access to the northern beaches and Northern Conservation Zone. The planning of public access pathways through and adjacent to the Northern Conservation Zone is currently being undertaken in consultation with DPUD and CALM. This is required in order to reconcile the projected increase in local and regional population and the expected demand for increased public access, with the need to protect dune land forms and vegetation.

4.2 Comment

The proposed land exchange conflicts with the proposed Metropolitan Region Scheme South-West Corridor Major Amendment, which proposes the whole of the NCZ be reserved for Parks and Recreation. The land exchange also conflicts with the draft South Metropolitan Coastal Planning Strategy, which recommends a regional level beach and public facilities node on land in the NCZ subject to the exchange. The changes described in the proponent's proposal may compromise the provision of public facilities and public access. The appropriate location of the northern public Parks and Recreation reservation needs to be resolved and depicted in Figure 3 "Amended Port Kennedy Stage 1 Boundaries" of the proposal document to effect Condition 14 of the Minister for the Environments approval.

4.2 Response

The proposed Metropolitan Region Scheme South-West Corridor Major Amendment is currently in the process of being modified to reflect the approved boundary changes as described in this application.

Prior to the land exchange, it was considered unlikely that a car park would be developed within the Northern Conservation Zone. With the excision of this land from conservation zoning, the provision of public facilities and public access is possible, and the proponent has expressed a desire to assist in this respect. Recommendations for a regional beach level facilities node at this location are currently being assessed in view of the need for controlled public access in the north western sector of the project area. However, the potential for

location of a regional node elsewhere on the site is also incorporated in the assessment. The results of this assessment will be included in the Conservation Management Plan currently in preparation.

The position of the amended Northern Conservation Zone has been presented to the Minister for the Environment as Ministerial Condition M2-2 in order to effect approval granted on the 19/10/93. The conservation zone boundaries are currently in the process of being surveyed prior to gazettal and vesting in CALM.

4.3 Comment

No dimensions or scale are provided with the proposal document so that it is not possible to gauge the width of the amended NCZ. The eastern boundary should be at least 100 metres from the western edge of vegetation, and follow the base of the dune sequence to ensure no earthworks occur on the dunes. Any reduction in width of the foreshore reserve will have significant impact on shore and dune stability. If the reduced width of the NCZ stands, land use adjacent to the eastern boundary should be constrained to minimise impacts.

4.3 Response

The application process for the conservation land exchange was undertaken in September 1993, full documentation of the proposal was presented at that time, and approval granted by the Minister for the Environment on 19/10/93. The purpose of this application is to seek the necessary change to Ministerial Condition 1 in order to recognise that approval. Hence the purpose of the diagrams was to provide background for the application. Full documentation and scaled drawings are available in the "Progress and Compliance Report" - Stage 1.1 Port Kennedy Development Project. Nevertheless, the following responses are provided in brief;

- The eastern boundary is greater than the approved foreshore width and is greater than 100 metres from the western edge of vegetation. No reduction in width of the foreshore reserve will occur.
- The boundary follows the base of the sequence of topographically higher and steeply sloping dune formations and the only earthworks within this area will be for

rehabilitation purposes if necessary. The existing track at the eastern boundary will form a Dual Use Pathway to enable access further south.

4.4 Comment

Prior to approval for the land exchange:

- (a) a comprehensive foreshore management plan should be required; and*
- (b) the wetlands of the area need to be surveyed and a comprehensive management plan prepared.*

4.4 Response

Approval for the land exchange has already been given by the Minister for the Environment. As no change to the foreshore reserve was proposed, a foreshore management plan was not considered necessary prior to approval, as detailed rehabilitation and management plans for the foreshore reserves of the site will be included within the Conservation Management Plan required prior to approval for the next stage of the project.

Management of the wetlands within the conservation areas is required within the Conservation Management Plan to be completed prior to approval for the next stage of the project.

5.0 OTHER MATTERS

5.1 Comment

The proposal indicates a triangular tract of land south of the access road which is not to be part of the SCZ. This land impinges on the central wetland complex within Stage 1 and is contradictory to Government policy that valuable dunes and wetlands in Stage 1 be protected. The north-west corner of this land is currently part of the SCZ and appears to be removed from the SCZ under this proposal. The proposal document does not address this.

5.1 Response

Under the ministerial requirements, the proponent was required to excise 12.6ha of leasehold land from the 20ha occurring adjacent to the southern conservation zone, leaving 7.3ha available for development purposes. However, environmental assessment indicated that this action would dissect wetlands which occurred over approximately 18ha of this area. The proponent therefore agreed to relinquish 18.8ha, constituting the wetlands and an appropriate buffer zone, in return for 2.5ha to be made available for development purposes. This agreement involved a change of boundary for approximately 1.3ha of the original proposed "southern conservation zone". The resultant triangular area of land (2.5ha) does not impinge upon nearby wetlands and is physically discreet from the dampland/wetland areas. The acceptability of placing future development in this area, in the context of the flora and extensive tracts of dune landforms which will be conserved within the project area, has been confirmed by the proponents specialist botanical and geomorphological consultants.

5.2 Comment

The plan in the proposal document detailing the proposed changes is inadequate. Stage and zone boundaries are inadequately identified and the original conservation zone boundary is incomplete.

5.2 Response

The application process for the conservation land exchange was undertaken in September 1993, full documentation of the proposal was presented at that time, and approval granted by the Minister for the Environment on 19/10/93. The purpose of this application is to seek the necessary change to Ministerial Condition 1 in order to recognise that approval. Hence the purpose of the any diagrams was to provide background for the application. Full documentation and scaled drawings are available in the "Progress and Compliance Report" - Stage 1.1 Port Kennedy Development Project.

5.3 Comment

The proponents do not substantiate their claim that the land exchange is environmentally desirable.

5.3 Response

The proponents disagree with this assertion and note that technical evidence presented in support of the land exchange was accepted by the DEP and the Minister for the Environment, leading to final approval for the land exchange to occur.

In addition to the comments received above, two submissions had no objections to the proposal for the change in ministerial conditions to accommodate the boundary change and endorsed the proposal as described.

Yours sincerely,

BOWMAN BISHAW GORHAM



MARTIN BOWMAN

TO: CHAIRMAN, VIA DIRECTOR, EVALUATION
FROM: JIM MALCOLM
SUBJECT: SECTION 46 REPORT - PORT KENNEDY BOUNDARY CHANGE
DATE: Friday, 11 February 1994

Background

The original environmental approval for the Port Kennedy Regional Recreation Centre included a condition requiring the proponent to investigate whether part of the proposed Northern Conservation Zone should be swapped for an area adjacent to the Southern Conservation Zone which was thought to be of greater conservation value.

The investigation was completed to the Minister's satisfaction and he gave the approval under that condition for the exchange. However, the first condition of the same approval requires the proponent to "adhere to the proposal as assessed" by the EPA (i.e. without the exchange).

The Minister has asked the EPA to report to him on whether this condition should be changed to enable the exchange to proceed. It is really a procedural matter, but the Port Kennedy proposal has a public high profile, especially with the Conservation Council, and some people hoped this S46 assessment offered the chance for a reassessment of (a) the conservation area exchange, and (b) the whole project!

It doesn't, but because of the sensitivities the report is more detailed and supported by more documentation than it would otherwise warrant.

Issue


Since the Minister has already decided, on advice of CALM and EPA that the exchange is a good idea this report, as expected, concludes that it should go ahead.


It also takes the opportunity to recommend an update of the conditions to include a number of conditions which are now applied as standard to all projects.

Approval of S46 reports has been delegated to the Chairman. Subject to any amendments you consider necessary, your approval of the report for transmittal to the Minister is sought.

Recommended actions

1. Note any required changes on the attached copy.
2. Subject to those changes, approve the report for transmittal

Report seen and changes marked

R Sippe, Director, Evaluation

Report approved for transmittal to the Minister, subject to marked changes being made.

R Steedman
CHAIRMAN

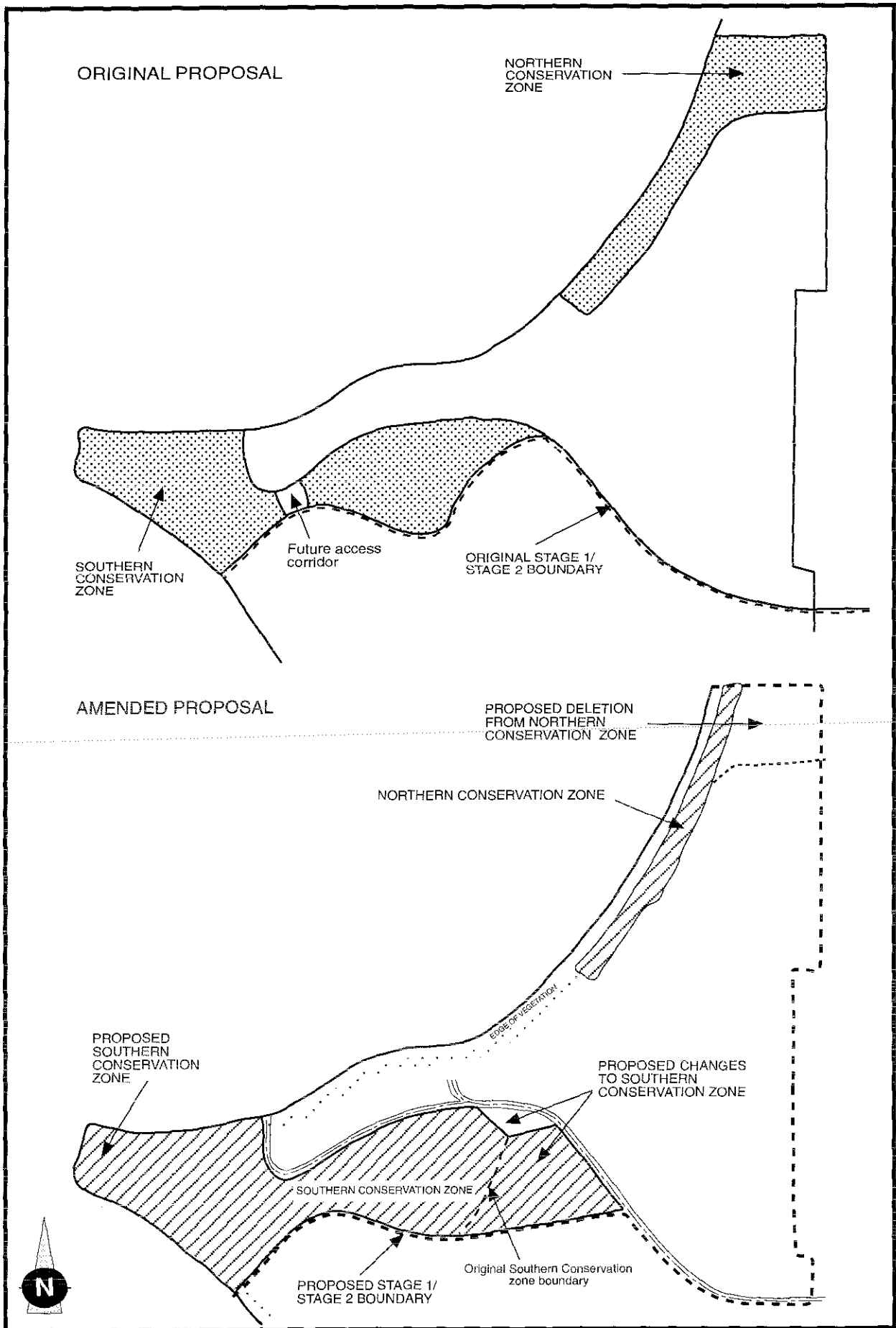
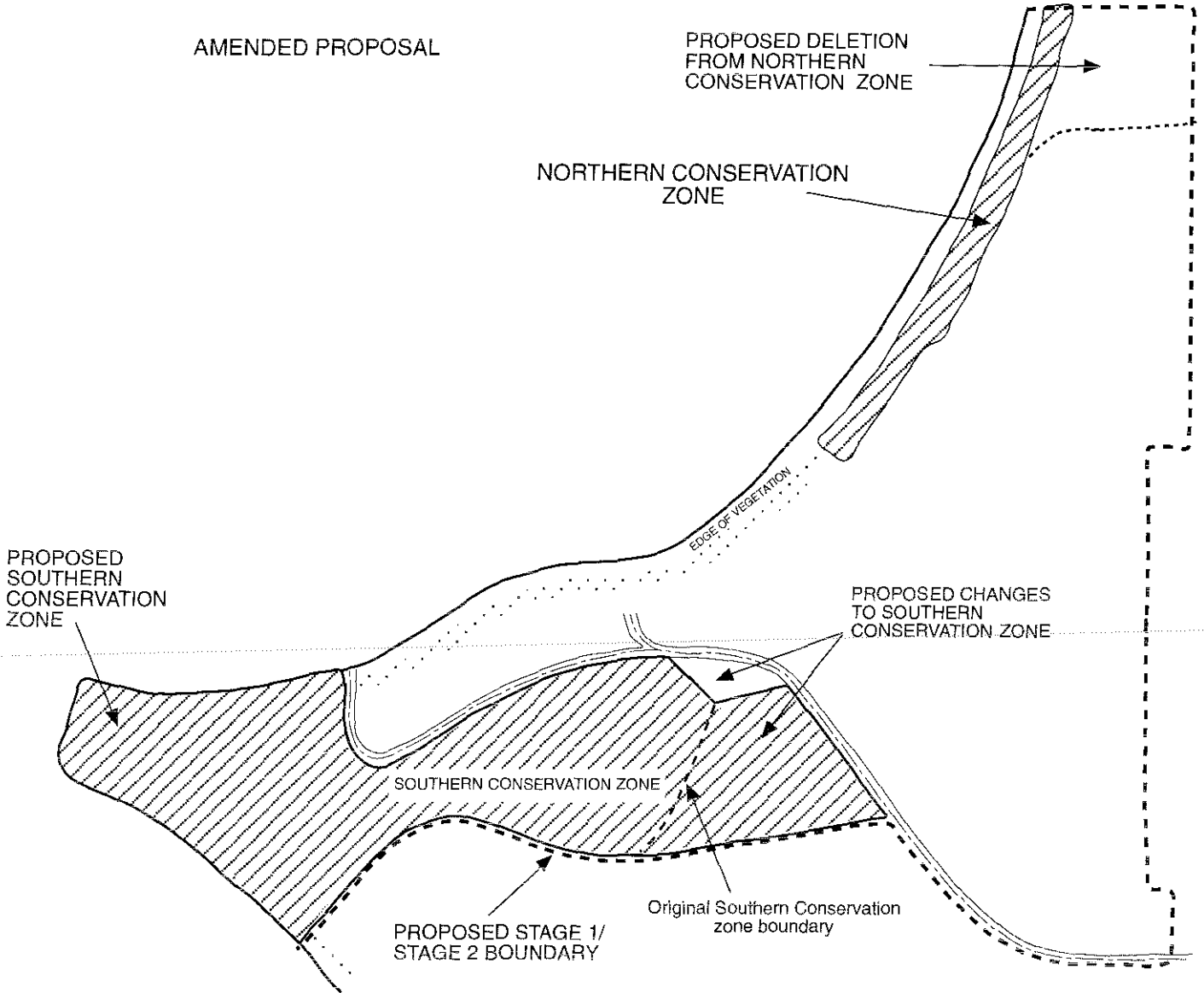


Figure 1. Proposed boundary changes (after maps in the proponent's document).

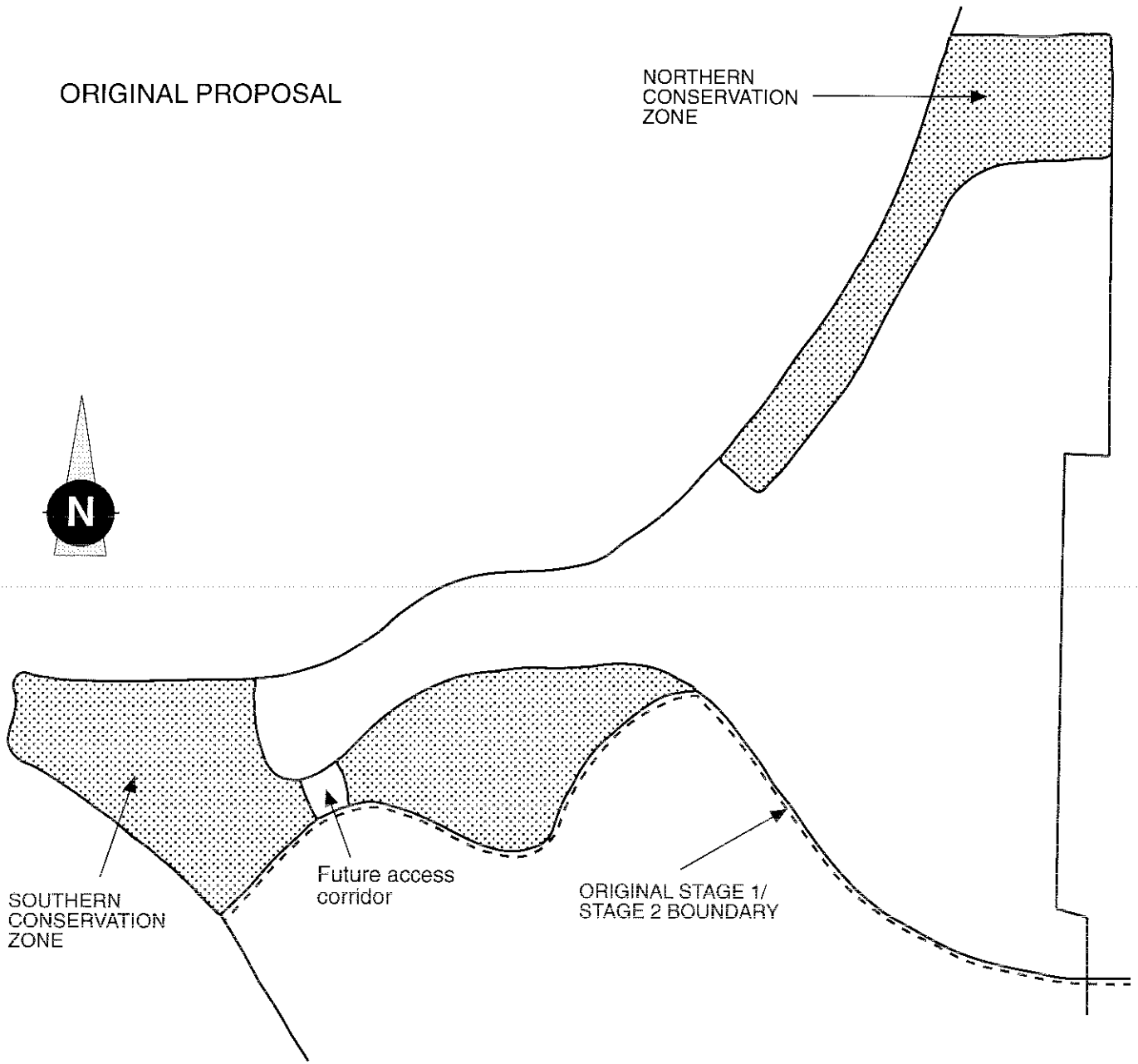
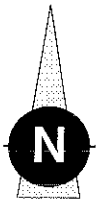
BULLETIN 130

AMENDED PROPOSAL



ORIGINAL PROPOSAL

NORTHERN
CONSERVATION
ZONE



SOUTHERN
CONSERVATION
ZONE

Future access
corridor

ORIGINAL STAGE 1/
STAGE 2 BOUNDARY