



August 24 2006

RE: THE RALPHS BAY CONSERVATION AREA

Dear Members of the Legislative Council,

We have already written to you concerning Project of State Significance (PoSS) status for the Walker Corporation's proposal to drain and excavate the Ralphs Bay Conservation Area at Lauderdale, in order to construct Tasmania's first canal estate.

There is, however, a parallel issue to which we would like to draw your collective attention.

Premier Paul Lennon has indicated his intent to table legislation to "*clear up uncertainties over the boundaries*" of the Conservation Area. His government has already attempted to argue that the sandflats should not be included.

How has this come about, and what is the motivation for "clarifying" the extent of the Conservation Area, so as to exclude the sandflats on which resident and migratory shorebirds depend?

The answer to this is simple: **the State Government's attempts to change the boundary of the Conservation Area are a direct result of an approach from the Walker Corporation's legal adviser in late June/early July 2005.**

We were told this in July 2005 and we have documentary confirmation of the fact.

The reason? **The proposed Walker canal estate's footprint would obliterate the sandflats of the Conservation Area.**

The State Government gave an in-principle commitment to the Walker Corporation on 4 March 2004 to, "make available the necessary Crown Land at a price reflecting pre-development market value", if Walker can get its proposal approved.

Perhaps the Lennon government finds it inconvenient that the Conservation Area extending across the sandflats of Ralphs Bay has recognised high conservation value, at the local, state, national and international level? Perhaps Paul Lennon somehow imagines our state's responsibilities under JAMBA and CAMBA (the Japan/China-Australia Migratory Bird Agreements), the Federal Environment Protection and Biodiversity Conservation (EPBC) Act, and Threatened Species legislation will just melt away if he can only change the boundary of the Conservation Area?

The Legislative Council must not allow such a cynical and unprecedented political assault on Tasmania's natural heritage to go unchallenged.

## LEGAL BACKGROUND AND HISTORY OF THE CONSERVATION AREA

### Creation of the Ralphs Bay Coastal Reserve, 23rd April 1982

Crown Lands Act Order No. 28 of 1982, signed by then Lands' Minister, Godfrey Harry ("Dick") Adams, reserved "6 hectares or thereabouts" of land as the Ralphs Bay Coastal Reserve.

#### *\* Were the sandflats included in the Coastal Reserve?*

Yes. The Schedule to Crown Lands Act Order No. 28 of 1982 makes this crystal clear. The reserved land consists of, "6 hectares comprising lot 23 on S.P.D. 1002 filed and registered in the Office of the Registrar-General and Recorder of Titles at Hobart **together with the land between lot 23 and the low water mark.**"

On ABC radio on 9 August 2006, Dick Adams said, *"It went down to the low water mark, now whether the low water mark covered all the mud flats, one doesn't know"*

#### *\* How can all the land across the sandflats to the low water mark be just 6 hectares? Is there an error here?*

No, there is no error. The land area **above the high water mark** (lot 23) was precisely defined, as 6 ha, but the area **between the high and low water marks (below lot 23) cannot be precisely defined and measured; hence its area cannot be stated. This is because "low water mark" is an "ambulatory boundary"**.

#### *\* What is an ambulatory boundary?*

As the name implies, this is a natural boundary that is not fixed in one place, but wanders, slowly and imperceptibly. Examples are the banks of a meandering river – and the low water mark, on a sandflat.

Government mapmakers well understand this. They have always drawn this boundary out across the sandflats, to a position that indicates low tide mark well into the Bay.

#### *\* What about the current Conservation Area, as opposed to the original Coastal reserve?*

The current Conservation Area derived from the Coastal Reserve under the Regional Forest Agreement Act in 1998, by adding a small extra parcel of land to lot 23 and renaming the Coastal Reserve the "Ralphs Bay Conservation Area". (See Plan No. 4713 from the Central Plan Register).

Note that on the right of the lower panel below the map, "Coastal Reserve" is crossed out, and "Conservation Area" is written over the words "Coastal Reserve".

To make this even clearer, the "Amendments" panel over at the left side of the plan below the map states clearly the reason for the new title: the Conservation Area was created, "BY NAME CHANGE BY RFA ACT OF 1998 (Sch. 9)".

This leaves no doubt that the Ralphs Bay Conservation Area is essentially the same parcel of land as the Coastal Reserve, and **extends to the low water mark on the sandflats**, just as the Ralphs Bay Coastal Reserve did.

*\* Why does Plan 4713 have the words "LOW WATER MARK" written below a heavy black line which is clearly placed at the high water mark? Is this a mistake? Does it need to be "corrected"?*

No, this is not an error and does not need to be corrected. The mapmakers seem to have no trouble understanding that the boundary of the Conservation Area is out on the sandflats, at low water mark.

However, since the low water mark is an ambulatory boundary, it cannot be marked on a Plan of the area. By stating "LOW WATER MARK" on the low water side of the heavy black line placed at the high water mark, Plan 4713 *indicates* the extent of the Conservation Area, far out on the sandflats, just as it has always been mapped.

*\* What is the stated size of the Ralphs Bay Conservation Area, as compared to the Coastal Reserve?*

On Plan 4713, a small line points precisely to lot 23, **ABOVE** the high water mark, and states its size as "**+/- 7.300 ha**".

**There is no indication of the size of the land area below the high water mark, for the reason described above: the sandflats on which the resident and migratory birds depend for food are defined by an ambulatory boundary, the low tide mark, which moves with the phases of the moon, the seasons and with shifts in the distribution of sediments.**

The Walker Corporation and the Lennon government are pinning their hopes on the simple phrase "**+/- 7.3 hectares**" and arguing that such an apparently small area cannot possibly include the sandflats.

They are wrong, and this can be argued at least four ways:

1/. The "**+/- 7.3 hectares**" only applies to Lot 23, above the high water mark, and not to the whole Conservation Area (see Plan 4713, which labels this very clearly);

2/. The Schedule to the 1982 Crown Lands Act Order creating the Coastal Reserve stated categorically that the Coastal Reserve extended to the low water mark, and the Conservation Area was derived from the Coastal Reserve by a simple name change.

3/. Even if "**+/- 7.3 hectares**" on Plan 4713 referred to the whole Conservation Area (rather than Lot 23 alone), the meaning of the "**+/-**" would be equivalent to

“thereabouts” in the phrase, “6 hectares or thereabouts”, in the title to the Schedule to Crown Lands Act Order creating the Coastal Reserve. The “+/-” would, like “thereabouts”, refer to the large area of land across the sandflats, whose precise area cannot be stated, due to the ambulatory nature of its boundary.

4/. If there is dispute between the phrase, “low water mark” or letters LWM, and the figure, “+/- 7.3 hectares”, it is standard Australian and New Zealand surveying practice to look to the legal description (in this instance, ‘low water mark’) for guidance.

*\* The mete or the bound?*

Where there is a dispute between the description of a boundary (the “bound”) and the measurement (the “mete”), the bound has precedence over the mete. Thus the description, “low water mark” has precedence over the measurement, “+/- 7.3 hectares” even IF the true meaning of this figure is wilfully ignored.

In principles universally observed throughout all Australian jurisdictions and New Zealand, surveyors give weight to all of the available evidence, but give weight to that evidence in the following order of priority: firstly, Natural Boundaries, such as low water mark; (*secondly and thirdly, monuments and fences - not applicable here*), and only fourthly, Survey Measurements.

**We call on all Members of the Legislative Council to defeat any attempt by the Lennon government to legislate away the sandflats from the Ralphs Bay Conservation Area at Lauderdale. These sandflats are vital feeding grounds for resident and migratory shorebirds, protected under State and Federal Law and international agreements. This Crown Land belongs to us all, and is NOT FOR SALE.**

The only place where the precise legal boundary of the Ralphs Bay Conservation Area can be defined is in a court. Whilst the state’s mapmakers have always been happy to accept the indicative boundary, “low water mark”, a court can establish once and for all where this line should be placed in the future, if such “clarification” is really necessary.

**Save Ralphs Bay Inc challenges the State Government of Tasmania to fund the correct legal determination of the extent of the Ralphs Bay Conservation Area, in court.**

Thank you for reading this document and giving careful consideration to these important matters. We look forward to your support in protecting the Ralphs Bay Conservation Area and the wildlife that depends on it for food and survival.

Yours sincerely

Save Ralphs Bay Inc.

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