



## PORT MANDURAH RESIDENTS' ASSOCIATION

PO Box 1339 Mandurah WA 6210

Hon Simon O'Brien  
Minister for Transport  
13<sup>th</sup> Floor, Dumas House  
2 Havelock Street, West Perth  
Western Australia, 6005

Re: Jetty Licensing

Dear Sir,

The Port Mandurah Residents' Association (PMRA) represents approximately 700 canal homes in the Halls Head Area and is the peak body with responsibility for advising the City of Mandurah on Waterway and Canal issues. We have been made aware of a letter from you to our Local Member Dr Kim Hames, and this response directly to you, is to address parts of your reply. It refers also to a long and frustrating history of dialogue with your Department.

***Letters referred to in this document: (1) Response to Minister for Transport, Hon Simon O'Brien's letter to Dr Kim Hames, Member for Dawesville (29 Jun 2009 29-06162 -10505, Randall letter) and including relevant references to (2) Munsie Letter LM3453 undated from Charles Noble, solicitor representing the DoT; (3), letter Giles to Free 23July2008, (02-040335;02-042182, ADD120; A929-9; 386647); (4) Zappara to Dean, DPI/02/1243 4/4/07; and (5) Karia to Munsie LM3453 (Oct 08)***

The PMRA would like to formally respond to letter (1) received and forwarded to PMRA by Dr Kim Hames, MLA for Dawesville, from the Minister for Transport and draws reference to previous correspondence (as listed above), between DPI (DoT) and the PMRA regarding inequitable and inappropriate imposition of jetty licensing fees.

The history of this problem stems from the "Jetties Act" (1926) which was enacted to accommodate persons who felt disenfranchised by the changes at the time of Federation to the colonial land titling system that moved property boundaries, which had to that point divided properties at the centre-point over rivers and streams, to a distance **onshore** from the water's edge. At that time significant traffic and commerce was by way of rivers and many individuals had built jetties on what now had become crown land. The Jetty Licensing system was introduced to give those individuals some degree of security for their jetty asset and commercial and recreational access.

1. PMRA argues that the design of artificial waterways, on what was formally private land (such as Port Mandurah canals) deliberately created titles for most blocks that

have a proportion of their rated area falling within the constructed waterway. Council rates are charged for the land on which the jetty is built. The construction of private jetty assets or any infrastructure within the jetty envelope is what we are referring to in this appeal. We contend that the current interpretation by the Department does not conform with the intention of the Act.

The cost of maintaining the canal waterways is met by the levying of an additional Specified Area Rate (SAR) on canal residents. This rate is administered by the City Of Mandurah which also makes a small contribution, (partly in recognition of significant non-resident use). In this regard, we would like to stress that we do not have “the privilege of using the public waterway exclusively” as stated in Karia to Munsie (#5).

Additionally, PMRA would also argue that the DPI (DoT) has not fulfilled its function (in respect to man made canals) as a result of its failure to recognise “the canal systems as public waterways”. It has not accepted responsibility for provision and maintenance of: (a) navigation lights and markers (paid for by the residents’ SAR); (b) sustaining navigable passage (dredging paid for by residents’ SAR); (c) removal of unsafe or unserviceable piles (paid for by the residents’ SAR); and (d), abatement of erosion, wall and shoreline protection (again, paid for by residents’ SAR).

2. PMRA would also like to ask you to review the Department’s records of actual documented “jetty inspections and actions” since 1990. We can assure the Minister that historically there has been negligible response from the DPI (DoT) when we have requested such services or to determine breaches within the canal system.

PMRA clearly endeavours to ensure the maintenance of very high standards for jetty design, construction, aesthetics and amenity. We dispute that the Department has had any input whatsoever in this regard and we contend that evolving jetty design and construction, as well as maintenance of high structural standards, is the responsibility of Local Government. PMRA has, from its own resources, produced comprehensive guidelines for Jetties and Boat-lifters (2004 and 2009) upon which the City has based many of its current bylaws.

There should be no difference between interpretation of bylaws for a jetty than for example a pergola or a diving board into a swimming pool with respect to the role of Local Government!

We strongly adhere to the premise that as no jetty will be constructed outside the “jetty envelope” there is no possibility whatsoever that any “council approved jetty” could ever cause a navigation hazard. This important point is not recognised by the DPI (DoT), (#4), (Zappara, April 2007 para 4-6, jetties “are” built on private land; - the management of that land is “not” the responsibility of the CEO of DPI.

3. PMRA has never intended to reduce standards; entirely the opposite is the case. Adherence to the Canal Resident’s covenants and guidelines and the weekly inspections by Council staff (again paid for specifically by residents) ensures high jetty standards and precincts are properly maintained. We have no record of any DPI (DoT)-instigated action with respect to any jetty reaching finality within Port Mandurah.

We have been disappointed in the lack of consideration from the DoT, because this has required the City of Mandurah, to accept responsibility for jetties and waterways management. This requires the CoM to raise a SAR to undertake exactly what the Department claims to be the purpose for collecting jetty fees. The failure of DoT to

meet its obligations has required the City to use funds raised by specified rates to make up for the inadequacies of DPI's prioritisation. PMRA has never objected to the size of the annual jetty fee we have only questioned what value is provided back to us from its collection, and the appearance of paying twice for the same service. We have tried to encourage the DPI (DoT) to fulfil its obligations without success.

4. We do not accept the farcical assertion that the licence fee "is just an administration fee to recoup necessary costs of administration" as indicated in DPI solicitor Noble's undated recent letter. (#2) The importance of the fee can be gauged by the conditional willingness of the Department last year to "approach the City of Mandurah to offer the role of agent to collect and retain the revenue from jetty licences" (#3) (Giles to Free 23/07/08, p2 para1)

We are disturbed by the inference that "substantial criminal penalties" (#2) (Noble p3 para3) could be applied with respect to breaching Section 8 of the Act. In this respect we believe that the Department should clarify whether to apply Section 8 may require an act of unauthorised trespass.

A recent survey of our membership indicated wide support for the SAR on canal residences because the residents actually see the benefits. The same cannot be said for the Jetty Licence fee.

To say that we are disappointed in the performance of the department is an understatement and PMRA will continue to seek a just solution to this inequity.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Peter Hick', written in a cursive style.

Peter Hick  
Chairman of the PMRA Canal Management Committee