



1 December 2019

**To the Parliamentary Inquiry into the Auditor- General's Report No 202:
Meeting Obligations to Protect Ramsar Wetlands (2016)**

Dear members of the Parliamentary Committee

Please find attached our Submission to your important Inquiry and thank you for accepting the submission a couple of days after the deadline (by agreement).

For further communications with our organisation please contact either myself or Julia Stockigt, Secretary.

For and on behalf of Save Westernport

Jane Carnegie

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Secretary: Julia Stockigt

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Save Westernport submission to the Inquiry into Auditor-General's Report No. 202: Meeting Obligations to Protect Ramsar Wetlands (2016)

1 December 2019

TO:

Public Accounts and Estimates Committee

Parliament of Victoria

Submitted online: <https://www.parliament.vic.gov.au/paec/inquiries/inquiry/986>

Save Westernport (SWP) welcomes the opportunity to make a submission to the Parliamentary Inquiry into Auditor-General's Report No. 202: Meeting Obligations to Protect Ramsar Wetlands (2016).

This Parliamentary Inquiry is timely and SWP hopes that the Inquiry will lead to further recommendations and actions to improve protection of our precious Ramsar Wetlands in Victoria.

1 About Us and our links to wanting better management and protection of Victorian Ramsar sites.

Save Westernport Inc, as the name implies, is a volunteer, not for profit community group of local residents who have come together to ensure that Westernport, with its Ramsar status, is properly protected now and into the future. Save Westernport was established in May 2018 but since our inception we have grown considerably and our work in seeking to protect the Bay is widely recognised and supported across the Mornington Peninsula community, especially on the western side of Westernport Bay. Save Westernport is politically unaligned.

The genesis of SWP and our main focus is AGL's proposal to import LNG and regassify it using a Floating Storage and Regassification Unit (FSRU) stationed permanently at Crib Point and accompanying 55km Pipeline to Pakenham (APA). If this proposal went ahead it would sit right in the middle of the Ramsar wetland with potentially disastrous consequences for the Wetlands.

The proposal is currently the subject of an EES, which is being undertaken, in part, because of the strong public pressure we helped to create through our advocacy and public awareness-raising about the proposal and its implications for Westernport as a Ramsar wetland.

Westernport currently meets 7 of the 9 criteria for Ramsar status as set out under the Ramsar Convention and is the third largest site in Victoria. Very few people in the region are aware of its biodiversity significance and Ramsar recognition but this is a key element of our work in the community. During the Federal election campaign we held a public meeting with all Candidates for the Seat of Flinders in which over 450 people attended. All candidates indicated their opposition to the AGL proposal, as did everyone who attended.

Through our work, SWP has become a champion for seeking better management and protection of this Ramsar wetland and for getting more people involved at the grassroots level. We work closely with other existing community based environmental groups in the area that have similar interests and we engage with government agencies and authorities in public forums and through submissions that have roles relating to management of this Ramsar site.

If Members of the Parliamentary Enquiry are further interested in the specific issues that we are concerned about, in relation to the Westernport Ramsar site, we would welcome the opportunity to discuss these further and/or arrange a site visit.

In the context of this Inquiry, we will now focus on the salient matters before the Committee, namely the progress in meeting the Auditor –General's concerns and recommendations from the 2016 Report.

2 Consideration of the Auditor General's (AG) Report and Recommendations

Note: Whilst SWP has made all attempts to provide accurate material for this Submission, based on our web research and understanding of the issues, this may not always be the case because of the complexities involved with numerous organisations, legislation and policies/strategies that impact on Ramsar sites combined with our status as a voluntary community organisation, with limited resources, rather than a body with direct access to inside government information.

In reading the 2016 VAGO Report for this Inquiry, it is evident that many issues then existed around Victoria's performance in meeting its obligations for the effective oversight of Ramsar sites in this State.

As noted in the Report, no robust governance framework was in place at the time and the evidence indicated that where Site Management Plans (SMPs) existed they were not being implemented effectively (p18).

Some Plans were embedded in Regional Water Strategies rather than being stand alone documents. Sites such as Westernport had not had an updated Site Management Plan since 2003, despite the requirement for Plans to be developed every 5-7 years.

In part, the issues raised related to poor resourcing for Ramsar management in this State. The Report also noted very poor high level oversight by DWELP and Parks Vic (p19) and that roles and responsibilities for management/implementation between different agencies was not always clear.

It could be concluded from reading the Report that developing and implementing robust governance arrangements to meet Ramsar obligations has not been a high priority of successive governments in this State.

The Auditor General's Report has hopefully had a significant impact in improving these arrangements. However, our organisation has a number of concerns and we believe that a lot more can be done to improve governance, management and implementation to protect our precious Ramsar sites.

2.1 VAGO Recommendation 1: 1st dot point – That DWELP, in conjunction with Parks Victoria and catchment authorities develop and implement robust governance arrangements for managing Ramsar sites, including clarifying roles, responsibilities and accountabilities for planning, management and reporting.

Save Westernport cannot comment directly on whether this has been achieved or not by the relevant authorities. We look forward to learning what has been done, to date, through this Parliamentary Inquiry. If it has been done this is not evident from our research for this Inquiry.

The issue for us is access to relevant documents that reflect this Recommendation. In attempting to put the jigsaw together (of roles, responsibilities and accountabilities, as well as strategies, policies and legislation), in relation to our Westernport Ramsar site, and more generally, it has been incredibly difficult to know who is responsible for what, what the specific pieces of the jigsaw are, let alone how they fit together. If you are an insider it might be clear but if you have a genuine community interest, it is quite difficult to navigate.

We think that it is vital for the community to be engaged with Ramsar sites and to have an accessible understanding of the governance structure at National, State and individual Ramsar site levels. This will help groups like ours more accurately explain how Ramsar operates in Victoria to our communities and be more effectively involved in relevant governance and protection processes.

Whilst this Inquiry is focussed on how Victoria is meeting its Ramsar obligations to protect designated wetlands, the relationship with the Commonwealth needs to be more clearly delineated in some Victorian government documents. As we understand the governance structure, the Commonwealth has overall administrative responsibility for Ramsar wetlands and for working with the Ramsar secretariat whilst the States have primary legislative and policy responsibilities within their jurisdiction.

The Commonwealth has very clear guidance and information about its Ramsar obligations as part of the Department of Environment and Energy's website.

<https://www.environment.gov.au/water/wetlands/ramsar>

A google search topic of 'Commonwealth and Ramsar' takes you straight to the site and its range of information. Included in this material is a set of National Principles and specific Guidelines for implementing the obligations at State and local levels. These are updated from time to time as well as other relevant documents and materials and links to Ramsar Secretariat documents.

Reference to meeting these National Principles and Guidelines should be the 1st component of a governance framework in Victoria.

DWELP has the overall responsibility for coordinating Ramsar management in this State. As the responsible agency it should be possible to google in the same way we did above (DWELP – Ramsar wetlands) to get access to all relevant information about Ramsar wetlands & their governance in Victoria . However, such a search turns up nothing.

Save Westernport believes that DWELP should develop a clearly defined and accessible web portal for Ramsar related matters that the google search engine will recognise and list.

This dedicated web portal should provide access to a single source of information on wetlands/Ramsar in Victoria. It should include detailed information about our Ramsar wetlands, broad information on the Ramsar Convention, Ramsar obligations, links to the Commonwealth site and links to relevant governance and management bodies, strategies, current Site

Management Plans and other relevant information. A direct link on the DWELP Homepage under Wetlands would also be helpful to enter the portal from the Homepage.

We also think it would be helpful in further clarifying the governance framework if DWELP can develop and publicise clear diagrammatic representations of the overall governance framework and heirachy, setting out the roles and responsibilities it has along with each other agency involved. These should be included in every publication that addresses Ramsar governance and the proposed dedicated web portal.

VAGO Recommendation 1: 2nd dot point – That DWELP, in conjunction with Parks Victoria and catchment authorities strengthen management plans to include time frames and resourcing to ensure actions are carried out in a timely and effective way.

SWP cannot comment on whether this has been achieved but we note that the 2017 Site Management Plan for Westernport does not specifically address timeframes for actions or resourcing. We strongly believe this should be included as soon as possible, perhaps as part of a Rolling Ramsar Review (if one is in the pipeline).

VAGO Recommendation 2: 1st dot point - That DWELP oversee the development of a finalised Ramsar Management Plan for the Port Phillip Bay (western shoreline) and Bellerine and westernport sites.

We addres our comments to the Westernport Site Management Plan (WSMP) only.

This Plan was under development when the VAGO Report was released. The SMP was finalised in 2017 and is available on line:

https://www.water.vic.gov.au/_data/assets/pdf_file/0021/66270/Western-Port-Ramsar-Site-Management-Plan_revised.pdf.

As the Plan has now been done and was oversighted by DWELP this aspect of Recommendation 2 has been met.

As set out in the Auditor- General's report there was a 14 year gap between the 2017 Plan and the previous WSMP in 2003. This gap showed a complete lack of proper management of this Ramsar site in this period and a failure to meet Australia's Ramsar obligations.

The updated Plan appears to meet the requirements of the content of Site Management Plans, in terms of components and it is comprehensive. It also

effectively explains the Site Management Plan in the overall context of relevant policy and legislation at a macro level (including international and national requirements) which is helpful.

However, it contains significant gaps in relation to emerging threats and the ECD is based on material from 2010 with known key knowledge gaps about many aspects of the ecosystems of the Bay. This is cause for concern by SWP.

As Save Westernport did not exist when this SMP was developed we played no role in its making; we recognise the valuable work of all the organisations that were involved at the time.

This said, some of the potential threats not listed in the Plan were well known at the time (e.g. the potential for a 2nd Port at Hastings) whilst others have emerged subsequently (AGL & its proposed FSRU and the pilot Coal to Hydrogen project in Hastings as part of the Hydrogen Energy Supply Chain Project.

We note Appendix I of the WSMP (P56/7), which sets out issues raised in the community consultations for the Plan, including lack of consultation with some parties. Of concern to communities, was the proposed Port.

The response (and why this threat was not directly included in the SMP) was:

The Western Port Ramsar Site Management Plan cannot explicitly consider the threats to ecological character from specific proposals not yet fully formed or developed.

The response then handballs any further action to the Commonwealth:

Under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), actions that have, or are likely to have, a significant impact on a matter of national environmental significance (MNES) require approval from the Australian Government Minister for the Environment (the Minister).... The Minister decides whether assessment and approval is required under the EPBC Act.

SWP does not believe that this is the right approach; any major threat which is a possible significant threat must be included in the SMP of a Ramsar site.

This approach also fails to reflect Article 3.2 of the Ramsar Convention which relates to site changes that have happened or are happening or which *could happen*.

As set out in the outcomes of the proceedings of 11th Conference of the Parties to the Convention, (Ramsar COP 11 Doc 24, July 2012) the definition and operation of the concepts and approaches for Limits of Acceptable Change (LAC) were addressed including the 'precautionary principle' underpinning Article 3.2

<https://www.ramsar.org/sites/default/files/documents/pdf/cop11/doc/cop11-doc24-e-limits.pdf>

The document (p28/9) categorically states the importance of applying this principle in managing Ramsar sites:

In the context of detecting, reporting and responding to change in ecological character, it could be argued that the text of the Ramsar Convention (in requiring a response to "likely" change) has always embodied an aspect of the precautionary approach, long before it became the widespread principle it now is elsewhere.

Section VI of Ramsar Handbook 18 on Managing Wetlands: Frameworks for managing wetlands of international importance and other wetland sites (4th edition, 2010) concerns "The precautionary approach as applied to environmental management", and contains the following:

When considering the carrying capacity of a site for any human use, activity or exploitation (i.e., its sustainability), the best available evidence should indicate that the activity will not be a threat to the features of the ecological character of the site.

Contracting Parties are, when implementing their wetland management planning process, invited to take into consideration the precautionary approach, as established in Principle 15 of the 1992 Rio Declaration on Environment and Development adopted by the United Nations Conference on Environment and Development (UNCED), which affirms that:

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.'

SWP raises this directive from the Ramsar Secretariat in full because we believe it should be the basis of all SMPs and underpin the governance framework from DWELP down. Just because a risk is not fully fledged is no

excuse for not including it; any possible change to the ECD of a Ramsar site should be the focus under the 'precautionary principle'.

SWP recognises that it may be beyond the scope of this Inquiry to address some of the matters we have raised (in relation to issues we have with the WSMP) but we think this Parliamentary Committee should take note of our concerns and our view that this Plan needs to be updated to include serious threats from further major industrialisation/pollutant industries. This is taking a 'precautionary' approach.

Further, work on the knowledge gaps in the ECD, as identified, need to be addressed as soon as possible. There are a number of key gaps and without a comprehensive baseline in these areas, it is impossible to have a full ecological understanding of the Bay and to effectively investigate changes in its ecosystems and potential or actual threats.

This might be possible in the Rolling Ramsar Review for this site but we could not find out if one is currently underway, or planned, or whether such studies could be part of this process. Given the significance of this Ramsar site, it may be timely for a comprehensive overview of all studies, and the conduct of new studies, as identified, to create a new 'Shapiro' Report.¹

We think that if these omissions remain, the WSMP will be ineffective in meeting its objective: *To maintain, and where necessary improve, the ecological character of the Westernport Ramsar site and promote wise and sustainable use.* (P 7 WSMP)

VAGO Recommendation 2: 2nd dot point - That DWELP work with catchment management authorities and site managers to develop and assess options for the direct funding of management plan activities focused on high-priority threats that impact on the ecological character of Ramsar sites.

This is a matter for those authorities and we look forward to hearing whether this recommendation has been implemented and how it is impacting on improved protection of Ramsar sites.

VAGO Recommendation 2: 3rd dot point – That DWELP implement arrangements to oversee how management plans are put into effect.

¹ The Shapiro report was the first and only comprehensive study of the Ecosystems of Westernport Bay undertaken by Professor M Shapiro and published in 1975. Many individual scientific reports and updates have been undertaken by various researchers since then but no overall study.

As above. We look forward to seeing what progress is being made.

VAGO Recommendation 3: That DWELP lead the development of a statewide approach to monitoring the ecological character of Ramsar sites, through a specific monitoring, evaluation and reporting framework.

We hope this has been done/is underway but our web search could find no information about this. If DWELP has implemented this recommendation, the documentation and outcomes should be made available to the public and form part of the proposed DWELP RAMSAR web portal (suggested above).

3 Some general matters relevant to Meeting our Obligations to Protect Ramsar Wetlands

SWP, as previously stated, is dedicated to helping protect the Westernport Ramsar site from further threats relating specifically to further largescale industrial developments or other key threats. Through this work we have also come to recognise the value of improving protection of all listed Ramsar sites in Victoria and nationally. Given the title of this Parliamentary Inquiry and its emphasis on 'protection', Save Westernport offers some further matters for consideration by the Committee.

3.1 Improving the EES process

The AGL proposal for an FSRU to be stationed off Crib Point for some 20 years plus is currently the subject of an Environmental Effects Statement (EES) process and is also the subject of a Controlled Action under the EPBC Act as a matter of national environmental significance (MNES).

Victoria and the Commonwealth currently have a bilateral in place which means only the Victorian EES will be used as the basis for environmental assessment of this proposed project.

Save Westernport welcomes the fact that an EES is underway. Given its Ramsar status, an EES should have been an automatic process triggered by the AGL application. However, it was only through the actions of community and environment groups, such as ours, and individuals, putting significant pressure on the Planning Minister that the decision was made to have an EES.

To us this shows a fundamental weakness/ flaw in the protection regime for Ramsar listed wetlands.

We suggest to this Committee that any application to the Planning Minister for a new industrial asset or other key threat to a Ramsar Wetland should:

- automatically set off an EES or
- be rejected outright as a totally unsuitable activity in a Ramsar Wetland.

Further to this, we think that the model for any EES in a Ramsar site should be distinguished from smaller scale or less nationally/internationally significant sites.

To the communities of Westernport, this area and Ramsar site is as valuable as Kakadu but imagine the outcry if an FSRU were to be placed in the heart of Kakadu or the Great Barrier Reef !!

The complexities involved in an EES in these sites are enormous. It is vital that the process is independent and seen to be independent. The reality is that the EES is conducted by the proponent, using scientists chosen and paid for by the proponent to carry out the environmental assessments with technical advice by a technical reference group (TRG) comprising some of the same players (agencies) who are responsible for managing Ramsar sites. There are no community representatives on the TRG.

We do not suggest that the scientists and reference group members are not being objective or acting unethically but there are perceived conflicts of interest. An EES process that is at arms length would provide much greater certainty of complete independence for the community.

To this end, Save Westernport proposes that this Parliamentary Committee give consideration to supporting a specific Ramsar site EES process that involves using independently chosen scientists to carry out the required studies (as determined by the Scoping requirements).

DWELP, because of their expertise, should probably be the agent for managing the process or perhaps an independent agency like the Victorian Environment Assessment Council (VEAC) would be appropriate.

The proponent would still be responsible for paying all costs associated with an EES.

Another consideration is the absurd timeframes for people and environment groups, with limited resources, to respond to the EES Report and Scientific Studies. The timeframe for the proponent is often years of development, as per the current AGL/APA EES, but 'the people' of this State are given 3

weeks at most to respond. How can we possibly address all the scientific information involved in such a short period of time effectively?

We strongly urge this parliamentary Committee to propose a special independent EES process for Ramsar sites

3.2 A legislative base for Ramsar governance and management

It was noted in the Auditor General's Report that Victorian legislation does not specifically cover Ramsar, but a range of legislation is relevant to wetlands management (p7). The Report references the main Acts including the:

- Catchment and Land Protection Act 1994 •
- Environment Protection Act 1970 (replaced by the Environment Protection Act 2017)
- Environment Effects Act 1978 •
- Flora and Fauna Guarantee Act 1988 •
- Water Act 1989.

A number of further Victorian Acts , not mentioned in the VAGO report, also have relevance including the

- National Parks Act 1975
- Marine and Coastal Act 2018
- Climate Change Act 2017
- Crown land (Reserves) Act 1978
- Wildlife Act 1975
- Fisheries Act 1995
- Planning and Environment Act 1987
- Native Title Act 1993
- Heritage Act 2017
- Fisheries Act 1995
- Port Management Act 1995

With reference to the Westernport Ramsar site these further Acts are also relevant:

- Marine safety Act 2010
- Transport Integration Act 2010
- Marine Act 1988
- Marine Safety Act 2010
- Emergency Management Act 1986 & 2013
- Geothermal Energy Resources Act 2005
- Greenhouse gas Geological Sequestration Act 2008
- Pipelines Act 2005

(Source: VEAC (2019) Assessment of the Values of Victoria's marine environment)

This list presents a very complex legislative arrangement that is almost impossible to understand or navigate - for anyone in government, let alone a volunteer based community organisation!

In following up the VAGO Report and in holding this Inquiry, Save Westernport would like the Parliamentary Committee to consider if it is possible to consider the following to address this complex maze of legislation:

- 1 develop stand alone legislation for Ramsar wetlands that incorporates relevant sections of these Acts, underpinned by the umbrella of Commonwealth obligations as set out in the EPBC Act or, in the alternative,
- 2 support a research project that draws out all the relevant sections and clauses of these Acts into a standalone document that is publicly available (perhaps through the DWELP proposed portal) to all interested parties so that the relevant legislative protections are known, and accessible.

Either of these ideas would make it much simpler for all parties involved in Ramsar management and governance and those in the community to better protect these areas.

3.3 Proposed changes to the SEPP Waters Policy

Proposed changes to long standing protection of waters from waste water discharge and pollutants under the SEPP Waters Policy are currently being reviewed as part of new EPA Regulations for the Environmental Protection Act 2017 & Environmental Protection Amendment Act 2018.

The proposed changes would axe the SEPPS and replace them with non-mandatory subordinate instruments. If this change proceeds the level of protection currently applying to Ramsar wetlands would be significantly diminished and possibly allow toxicants and pollutants into wetlands.

Save Westernport does not support these changes and brings this matter to the attention of the Parliamentary Committee

Concluding comments

Thank you for holding this inquiry at this time. Save Westernport hopes our Submission has added value to the work being undertaken and we look forward to your report and recommendations for further strengthening protection, management and governance of Victoria's Ramsar sites.