

RE: Petition 014 Proposed land fill in Esperance

Please note that this petition has not been taken to the Ombudsman.

As Principal petitioner I make this submission on behalf of the Esperance Merivale Tip Action Group (**EMTAG**), which comprises a number of concerned citizens in Esperance, opposed to the rubbish tip site proposed by the Shire of Esperance (**Shire**) for Lot 12 Kirwan Rd fronting Merivale Rd, Esperance.

Background to Landfill Proposal

We understand that the Shire proposes to use the Lot 12 Kirwan Rd fronting Merivale Rd (**the Site**), as a rubbish tip for the next 100 years. In April 2017, the Shire purchased the Site for the purposes of developing the rubbish tip because the existing site at Wylie Bay is approaching the end of its operational lifespan.

We believe that the Shire purchased the Site despite all necessary environmental and due diligence studies not having been completed to confirm that the location is appropriate for the proposed use, taking into account surrounding environmental values, land uses and suitability from a geological and hydrogeological perspective.

Talis Consultants were engaged by the Shire to complete a Due Diligence and Landfill Capability Assessment for the site (**Due Diligence Report**). This was delivered and made public in March 2017. This report concludes that there are no risks from the construction of a landfill in this karst type landscape and has been accepted by the Shire. However, we note that a Phase 1 - Hydrogeological Investigation, referred to in the Due Diligence Assessment, which is fundamental to the selection of the Site, Client Copy is dated 7 June 2017. This is some two months after Esperance Shire Councilors made the decision to purchase Lot 12 Kirwan Rd.

Concerns with the Rubbish Tip Proposal

Set out below are some of our concerns to date with the Shire's proposal to develop the Site as a rubbish tip:

(a) Location, and impact to surrounding environment

Protection of the surrounding area needs to be seen in the long term, longer than 100 years (given that waste in the rubbish tip will remain there long after its operational life).

The Shire of Esperance has publicly committed to follow the Victorian EPA "Best Practice Policy for the Siting, Design, Operation and Rehabilitation of Landfills, in relation to the proposed Merivale rubbish tip. This policy states that:

"The first and most important consideration in the prevention of environmental impacts from landfill is selection of an appropriate site." (p5).

Based on our own knowledge of the Site and surrounding environment and land uses, we firmly believe that the Site is inappropriate and a risk to the environment if used as a rubbish tip, and that the Shire has purchased the Site in a rush without considering and completing all necessary studies.

Information we have received from expert hydrological sources, shows that developing a rubbish tip on the Site poses significant environmental risks, in particular to Ramsar wetlands of international importance.

Lot 12 Kirwan Rd is located immediately above, and partly in the catchment of a series of important wetlands which are listed as being of local, national and international significance for a range of vulnerable migratory water birds. To the west, the Lake Warden System is protected under the international Ramsar Convention.

As the Committee would be aware, Ramsar wetlands are afforded protection as a matter of national environmental significance under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999 (EBPC Act)* and that any action that has, will have, or is likely to have, a significant impact on the ecological character of a Ramsar wetland must be referred to the Commonwealth Minister and undergo an environmental assessment and approval process.

The eastern Bannitup Lake wetland reserves are presently not included as a Ramsar wetland, but we understand that the Department of Biodiversity Parks and Attractions has in its approved 1916 Management Plan proposed that the treaty area be extended to include them.

The water source for both east and west wetlands and that of surrounding properties arises from a catchment area which includes the proposed rubbish tip Site. We are concerned that any contamination from the rubbish tip of surface, sub-surface or ground water would eventually find its way into the RAMSAR and Bannitup wetlands and water sources used by surrounding agricultural properties.

We firmly believe that the Shire and all other government agencies should be adopting a precautionary approach and not proceeding with the Site as a rubbish tip given the uncertain impacts that are likely to arise from such a high risk development.

A key object and principle of both the EPBC Act and the State *Environmental Protection Act 1986* (WA) (**EP Act**) is the “precautionary principle”. Under the EP Act this principle states:

“Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason or postponing measures to prevent environmental degradation”. (Section 4A(1))

The same principle is in the EPBC Act, using similar language. We believe that there is significant uncertainty about the impacts of developing a rubbish tip on the Site on the surrounding environment, given the uncertainty of underlying geology and hydrogeology (see below). Should groundwater become contaminated, the impacts to the environment will be serious and irreversible.

In addition, we submit that other fundamental objects and principles of the EP Act that should be taken into account by the Committee as well as other decision makers relevant to this project include:

- The principle of intergenerational equity. This states:

“The present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations” (Section 4A(2)).

In our submission, developing a rubbish tip that will operate for over 100 years (and contain waste for years after that) at a Site located close to sensitive environmental values and competing land uses does not properly take into account this fundamental principle of the EP Act.

- The principle of waste minimization. This states:

“All reasonable and practicable measures should be taken to minimize the generation of waste and its discharge into the environment” (Section 4A(5)).

We submit that the Shire has not taken all reasonable and practicable measure to minimize the discharge of waste, but instead has made a rushed decision to locate the rubbish tip at the Site without considering other more suitable options.

(b) Geology and landscape

The proposed rubbish tip site is located on sand plain which consists of a layer of sand overlying degraded marine sedimentary rocks over basal granite. These marine sedimentary rocks are known as Spongelite or Pallinup Siltstone and are of particular interest as it is a material that is very porous to water.

Most of the calcium carbonate in it has dissolved forming sub-surface cavities and channels which allow water to move preferentially and rapidly through the subterranean landscape. These marine sedimentary rocks are geologically recognised as exhibiting karst-like (limestone) properties for they contain underground water channels, caves, springs and surface sinkholes.

All of these features are exhibited on adjoining properties and are indicated in the drill cores taken from the site. In a review of best practice siting of proposed landfills, the Victorian EPA (2015) states that 'karst landscape formations are inappropriate for the siting of landfills' (p15).

A more detailed summary of the Shire of Esperance deviation from Victorian EPA best practice siting of proposed landfills can be found in "Attachment 1 EMTAG Siting of Landfills".

(c) Hydrogeology

An expert hydrologist's (of some 20 years' local Esperance experience) review of Talis' 'Phase 1 - Hydrogeological Investigation' has identified a number of points which challenge the siting of a rubbish tip at Lot 12 Kirwan Rd as "no risk".

A detailed explanation of the discrepancies that have been identified can be found in "Attachment 2 EMTAG Summary Hydrogeology".

We submit that a further and rigorous review of the hydrogeological assessment by an independent party is essential.

(d) Surrounding land uses

The Site is presently used for a blue gum plantation, established for production of woodchips.

The surrounding farming properties support cattle and sheep enterprises and some cropping. The livestock enterprises draw their water supplies either from bores on the sand plain adjoining the proposed rubbish tip site or from the minor local creeks whose catchment includes the rubbish tip site. Bores are used because the clay in this area (including Lot 12 Kirwan Rd, the Site) is too porous to hold water. This water is also used for toilet and laundry water, lawns, gardens, orchards and vegetable gardens of the surrounding properties.

Interestingly Talis claim in the Due Diligence Report that dams on Lot 12 show that the clay is suitable to line the Landfill – we claim there are NO dams on the property; rather clay pits used to get clay for paddock clay spreading are mistaken as dams. The clay pits on Lot 12 do not hold water as they are porous - that is why land holders in the surrounding area do not build dams and are reliant on underground water.

We are very concerned that contamination of the groundwater would impact not only on use of this water for livestock and households but could also contaminate produce.

The site selection criteria identified by the Shire does not include or take into account the current and potential future land use of the location – tourism. The Site fronts Merivale Rd which is the gateway to two of Esperance's most popular tourism destinations, being Cape Le Grand National Park and Esperance Stonehenge. Both have made significant tourism infrastructure investment in the region. With over 170,000 visitors (2015/16) Cape Le Grand National Park and Lucky Bay continue to be a significant promotional icon for local Esperance Tourism, Australia Golden Outback, Tourism WA and Tourism Australia. Furthermore, the proposed site of putrescent waste, is less than 2km away from Stonehenge (16 000 visitors in 2016). Tourism and a rubbish tip in such close proximity are incompatible land use due to inherent visual and odour risks.

(e) Local government approvals process

We understand that the Shire is proposing to utilise provisions of the *Public Works Act 1902* (**Public Works Act**) to avoid the normal rigour of the Shire development approvals process which enables the public to comment and participate in the decision as to whether or not the development should proceed.

In September 2016, the Shire requested a change in the zoning for the proposed Site from Agriculture to 'Special Purpose'. We believe that the 'Special Purpose' that the Site was intended for, a rubbish tip, was not revealed to the public or the Department of Planning until the Department requested further information.

The Shire's 'Site Selection Study: Freehold Land Assessment – Technical Report' May 2016 p12 states:

'With the Wylie Bay Facility approaching the end of its operational life, the Shire is under significant pressures to progress this project'. Furthermore, the recently accepted Due Diligence Assessment for the proposed rubbish tip at Lot 12 Kirwan Rd, the Shire's consultant Talis have stated on pages 47-48, that 'the Shire of Esperance proposes to use the Public Works Act'. This would effectively circumvent a time consuming, highly scrutinised rezoning process. This would help to alleviate 'pressures to progress this project'.

We are very concerned that the Shire is proposing to use the Public Works Act to bypass the transparency of the planning approvals process to rush through the construction of the rubbish tip on the basis that it considers it to be a "public work". Also by using this strategy we are concerned the Shire will be avoiding the normal rezoning process where change to the current zoning (Agricultural-General to Industrial–Noxious) would require scrutiny by a number of Government Agencies, including DPAW, DER, Department Water, EPA and Department Planning as well as a period allowing public submissions. Research into the history of PWA use in the last 40- 50 years indicates this Act has not previously (and possibly never) been used by a local WA jurisdiction in this way.

Conclusion

In respect to the above information disputing Lot 12 Kirwan Rd, Merivale as a site suitable for a rubbish tip to service the Esperance community for up to 100 years, we respectfully request the Legislative Council to ensure that the highest level of environmental scrutiny be placed on the proposed landfill site. In particular we request that use of the PWA for this purpose to be disallowed.

Thank you for considering our submission.

Jill Fitzpatrick
Chairperson, Esperance Merivale Tip Action Group (EMTAG)

References

[Http://www.esperance.wa.gov.au/current-project-information#accordion-0-0](http://www.esperance.wa.gov.au/current-project-information#accordion-0-0)

- Site Selection Study: Freehold Land Assessment – Technical Report, May 2016
- Due Diligence and Landfill Capability Assessment Lot 12 Kirwan Road, March 2017
- Phase 1 - Hydrogeological Risk Assessment Lot 12 Kirwan Road June 2017

Siting, design, operation and rehabilitation of landfill, EPA Victoria, 2015

<http://www.epa.vic.gov.au/our-work/publications/publication/2015/august/788-3>

<http://www.environment.gov.au/epbc/publications/significant-impact-guidelines-11-matters-national-environmental-significance>

'Esperance and Recherche Management Plan 84, 2016, p.21' (Appendices 2 & 3, pp. 137,139)

Attachments

Attachment 1 – EMTAG Siting of Landfills

Attachment 2 – EMTAG Summary Hydrogeology

12 July 2017