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Submission to the Joint Select Committee on Ethical Conduct

Save Ralphs Bay Inc. appreciates this opportunity to make a submission on the issue of ethical conduct of the Tasmanian Government and Members of Parliament.

In general, we support the creation of an independent investigative body, able to inquire into questions relating to good governance, transparency, honesty and ethical conduct of Government and elected representatives.

The independence of this body is of the highest importance, and therefore it should:

- have its own independent budget.
- report directly to the Parliament, not to the Premier, Cabinet or Government of the day.
- have membership from a range of backgrounds, including at least one non-Tasmanian member, and at least one member from a community “watchdog” group committed to keeping a close eye on transparency and good governance.
- have regular “refreshment” of its membership, to protect against its becoming entrenched as part of the political establishment.
- provide whistleblower protection and confidentiality, as necessary to conduct its business.

We do not propose to provide further detail in relation to the establishment and operation of such a body, beyond indicating our support for its establishment.

However, we would like to raise with the Select Committee a number of concerns arising from our experience of the actions of the Tasmanian Government and certain Members of Parliament, during the history of our campaign to oppose the conversion of the Ralphs Bay Conservation Area at Lauderdale into Tasmania's first canal housing estate. The campaign began in March 2004 and continues to this day.

In particular, we would like to raise the following matters, which appear to be instances where the Tasmanian State Government and associated persons have not behaved in accordance with the high standards of honesty, transparency and ethics expected in the service of Tasmania and the Tasmanian community:

1. Discussions between the Tasmanian State Government and the Walker Corporation in regard to the proposed canal estate development at Lauderdale, and the in-principle agreement to make the Ralphs Bay Conservation Area at Lauderdale available for sale to the developer, in the absence of any prior public consultation, and contrary to the provisions of the State Coastal Policy.
2. "Three month public consultation" on the proposal announced by then Acting Premier Paul Lennon in a letter to residents of the South Arm Peninsula in March 2004, in which it was stated 3 times the public response would be taken into consideration when deciding whether the proposal was to proceed into the formal planning system; the conduct of this "consultation" and the Government's subsequent response.
3. The refusal of Paul Lennon MHA to meet representatives of the community in relation to the proposal, in spite of his readiness to meet with Lang Walker and Graham Richardson.
4. The "shelving" of the Walker Corporation's proposal prior to the 2006 State Election, and its reappearance soon after the return of the Labor Government.
5. The "Ralphs Bay Conservation Area Clarification Bill 2006" and the manner in which the true nature and intent of this Bill was represented to the community in the media, by the State Government.
6. The refusal by then Planning Minister Steve Kons MHA to allow the Resource Planning and Development Commission (RPDC) to assess a Draft Planning Directive banning canal estate developments, contrary to the Commission's recommendation.
7. Actions (and inaction) of the State Government and its members in relation to the Tasmanian Marine Protected Areas Strategy 2001 and the RPDC's Inquiry into the establishment of marine protected areas within the Bruny Bioregion.

1. Discussions between the Tasmanian State Government and the Walker Corporation in regard to the proposed canal estate development at Lauderdale, and the in-principle agreement to make the Ralphs Bay Conservation Area at Lauderdale available for sale to the developer, in the absence of any prior public consultation, and contrary to the provisions of the State Coastal Policy

1.1 Government's disregard for the State Coastal Policy 1996

Save Ralphs Bay Inc. contends that State Policies should be taken seriously by Government; should provide a context within which development proposals are deemed appropriate or inappropriate for consideration by Government and the Planning system, and should take precedence over financial incentives when Governments consider the ways in which their actions shape the future of Tasmania.

Save Ralphs Bay Inc. contends that the Tasmanian State Government under Premier Jim Bacon did not follow these precepts of good governance. Instead, a number of provisions of the State Coastal Policy 1996 were apparently ignored, among them:

1.1.2 The coastal zone will be managed to protect ecological, geomorphologic and geological coastal features and aquatic environments of conservation value

The saltmarsh and wetlands of Ralphs Bay are of high conservation value according to the State of the Derwent Report 2003. The Tasmanian Forest Practices Board 2002 states wetlands are one of the most degraded and threatened habitats in the world.

1.1.3 Conservation and protection of migratory species and rare, vulnerable and endangered species

Ralphs Bay is listed on the Register of the National Estate for its significant value as a wetland ecosystem which supports up to 14 migratory bird species 'protected' under international agreements with Japan, China and Korea; and rare, vulnerable and endangered plant and insect species.

1.1.9 Important coastal wetlands will be identified, protected, repaired and managed so that their full potential for nature conservation and public benefit is realised. Some wetlands will be managed for multiple use, such as recreation and aquaculture, provided conservation values are not compromised

Despite its official recognition as a wetland habitat of local, national and international significance, the developer's Tasmanian representative claimed the bay is degraded and that it is not a bird habitat. Ralphs Bay IS a multiple use nature conservation area, enjoyed by bird watchers, school groups, sail boarders and by the local community generally.

2.1.1 It is acknowledged that there are conservation reserves and other areas within the coastal zone which will not be available for development

The proposed development site was declared a Coastal Reserve in 1982, and a designated Conservation Area in 1992. The State Government's response to the Walker Corporation's plan disregards the protective regime put in place to ensure the Ralphs Bay Conservation Area is conserved in perpetuity for future generations.

2.1.5 Application of precautionary principle to development that may pose serious or irreversible environmental damage

If ever there was a case for extreme caution, it is the Walker Corporation proposal. Canal estates in coastal areas interstate have caused irreversible environmental damage including habitat destruction, the decimation of nearby fisheries, acid-sulphate soil pollution, household runoff pollution and resulting poor water quality. The NSW State Coastal Policy prohibits the construction of canal estates, and there is a moratorium on their construction on Queensland's Gold coast.

2.4.1 Minimise and, where possible, totally avoid, any impact on environmentally sensitive areas from the expansion of urban and residential areas

The canal estate and marina proposal put forward in 2004 with State Government support was the single largest residential development proposal in Tasmanian planning history. It is not so much 'expansion' and 'impact' that is being proposed, but the wholesale destruction of an environmentally sensitive area.

2.7.1 All future use and development of public land in the coastal zone will be consistent with this Policy

If the Tasmanian Government was serious about upholding its own environmental planning laws, it would have advised the Walker Corporation that its canal estate development plan contravened a number of sections of the State Coastal Policy. This would have been an honest response, motivated by the desire to put good governance ahead of an apparently lucrative major development. It would have saved the Lauderdale and South Arm peninsula community enormous distress.

It is clear the State Coastal Policy has not been implemented to the necessary standard to ensure coastal conservation and genuine sustainability principles as its primary focus. Through lack of political will at a State Government level, and apparent apathy at the bureaucratic level, the Policy has been allowed to become largely irrelevant to decision-makers.

In conclusion, *"...the real problems with coastal development (are) being caused by the Government's lack of action and leadership. There has been no systematic implementation of coastal policy and it's left to poorly framed council planning schemes to do the job."* Bob Graham - leading environmental planner and architect of the State Coastal Policy 1996. *The Mercury* 14 June 2004

This is neither good nor ethical governance for the Tasmanian community nor for the voiceless communities of living organisms with which we share our island home.

1.2 State Government's in-principle agreement to sell the Crown land of the Ralphs Bay Conservation Area to the Walker Corporation, and the State Government's denial that any such agreement in fact existed

The State Government provided the Walker Corporation with an in-principle agreement to make the Ralphs Bay Conservation Area at Lauderdale available for sale, without first consulting the community or adequately investigating all the relevant issues.

The existence of any "deal" with the developer was strenuously denied by Environment and Planning Minister Judy Jackson, who was quoted in the *Mercury* on 13 March 2004 as saying, *"It's very early days and there has been no deal and there has been no agreement with Walker Corporation."*

The agreement between the State Government and the Walker Corporation only came to light following a Freedom of Information request made by Nick McKim MHA.

It was revealed that, in a letter dated 4 March 2004, Judy Jackson informed Walker Corporation that the Tasmanian Government would be prepared to *"... make available the necessary Crown land at a price reflecting 'pre-development' market value."*

Although the Government advised the Walker Corporation of a number of issues relevant to the development proposal, it overlooked the existence of the Spotted Handfish, *Brachionichthys hirsutus* in the vicinity, and did not advise the developer of this matter. This was in spite of the fact that the Spotted Handfish is listed as Critically Endangered by the International Union for the Conservation of Nature (IUCN) and is in danger of being the world's first ever marine fish species to become extinct since the naming and recording of species began. The distribution of this endemic fish species is restricted to the lower Derwent estuary and associated bays including Ralphs Bay.

The ignorance of the State Government in relation to this issue indicates a reckless disinterest or disregard for Tasmania's natural heritage values.

The actions and statements of the State Government in relation to its agreement with Walker Corporation were neither transparent nor, in the view of Save Ralphs Bay Inc., in the best interests of the local community or the State in general.

2. **“Three month public consultation” on the canal estate proposal announced by Acting Premier Paul Lennon in a letter to residents of the South Arm Peninsula dated 15 March 2004, in which it was stated three times the public response would be taken into consideration when deciding whether the proposal was to proceed into the formal planning system; the conduct of this “consultation” and the Government’s subsequent response**

In a letter to residents dated 15 March 2004, then Acting Premier Paul Lennon said, *“The Government will review both the project description and the outcome of the public consultation program before it makes any decision on whether to agree to the proposal going through the formal planning approval process”.*

The “public consultation” referred to in Mr. Lennon’s letter was ill-defined. Calls to the Planning Minister’s office soon revealed that little thought or planning had gone into the consultation Mr. Lennon had announced. The commencement and closing dates for the “consultation” were unknown to senior advisers; it was the developer’s own consultation process, apparently with little or no Government oversight.

The State Government under Acting Premier Paul Lennon clearly wished to give the impression that the community’s wishes were being sought, and would have some influence on subsequent events in relation to the Walker Corporation’s proposed development. However, there was no independent mechanism in place to enable this to happen.

During the “public consultation program”, the Walker Corporation had a small office at Lauderdale, open at inconvenient times, where comments could be placed in a box – but members of the community were given no formal way to indicate their wishes to the State Government, in response to Mr. Lennon’s letter.

Several politicians conducted their own surveys of public opinion, each survey showing overwhelming opposition to the proposal. Harry Quick MHR conducted a survey of the electorate in June 2004, which showed 67% opposition. A smaller survey by Lin Thorp MLC gave a similar result. Senator Paul Calvert conducted probably the largest survey, and this showed 73% opposition to the proposed development. Senator Calvert’s office sent out 6000 forms and received a 22% response rate, which was unusually high and showed the strength of community feeling.

Save Ralphps Bay Inc. conducted its own community consultation, collecting 2500+ letters, emails and signatures from the community at information stalls and Public Information Evenings where independent experts provided information on a range of topics. We encountered both overwhelming support for our campaign throughout the community, and widespread outrage, not only at the proposed development, but also at the Government’s handling of the issue.

The correspondence handed to the State Government revealed that the proposed development failed to convince, coming, as it would, at the cost of a protected area, an already dwindling wetland ecosystem, internationally significant bird habitat, the critically endangered Spotted Handfish colonies in and near Ralphps Bay, community recreational pursuits, and a treasured vista. Our submission also detailed the

numerous unlawful aspects of the Walker Corporation plan. We believe Local, State and Commonwealth Laws and policies, as well as international conventions and agreements, would be contravened if the Walker Corporation plan were to proceed.

In addition to this, thousands more letters were sent directly to members of the Government by the public. Minister Jackson's office began tallying the responses but was soon overwhelmed. Save Ralphs Bay Inc. received the first 9 summary sheets of the tally following a Freedom of Information request: out of the first 227 items of correspondence summarised in the Minister's office, 224 communications were opposed to the development; 2 supported it and 1 was neutral. This is **99% opposition**, in unsolicited letters to the Minister that were neither organised by, collected by nor sent in by Save Ralphs Bay Inc.

What, then, of the Government's commitment that it would take the community's wishes into account when deciding whether the development proposal should proceed to a formal assessment?

The community was left feeling that it had been treated with contempt, in a sham consultation that was neither transparent, competently organised, independent nor ethical. At no time, to our knowledge, have the Tasmanian State Government or its elected members ever publicly referred to the "public consultation" since Mr. Lennon's letter of 15 March 2004, or to the "results" of the said "consultation".

There has never been any indication whatsoever that the State Government did, as promised, *"review both the project description and the outcome of the public consultation program before (making) any decision on whether to agree to the proposal going through the formal planning approval process"*. Pure political expediency has apparently governed all decisions of the State Government in this regard.

The Tasmanian community surely has a right to expect greater transparency and honesty from its Government.

3. The refusal of Paul Lennon MHA to meet representatives of the community in relation to the proposal, in spite of his readiness to meet with Lang Walker and Graham Richardson

While delegates from Save Ralphps Bay Inc. met with then Environment Minister, Judy Jackson MHA and then Economic Development Minister, Lara Giddings MHA, we were not able to meet with the Premier Paul Lennon MHA, in spite of the size of the proposed development, the magnitude of its many impacts on the local community and the fact that he chose to meet with Graham Richardson on Thursday 29 April, after Mr. Richardson arrived in Hobart on a jet chartered by Walker Corporation (Saturday *Mercury*, 1 May 2004).

As a Franklin MP as well as Premier of the day, we felt it was inappropriate for Mr. Lennon's office to ignore most of our requests for meetings, issuing only the occasional refusal.

Was this refusal to meet with constituents in relation to a major issue of the day an indication of a healthy democracy, or transparent and open government? We think not.

4. The "shelving" of the Walker Corporation's proposal prior to the 2006 State Election, and its reappearance soon after the return of the Labor Government

4.1 The "shelving" of the proposed canal estate development

In the lead-up to the 2006 State Election, pressure was on the members of the State Labor Government in relation to the Walker Corporation's canal estate proposal. As a result of extensive lobbying, Save Ralphps Bay Inc. was certain the pro-development forces in Cabinet did not have the numbers to give the proposal the go-ahead that was being sought, with Project of State Significance status.

On Tuesday 30 August 2005, Mr. Lennon "stopped off" to see Mr. Walker in Sydney (*Mercury* page 3, 7 July 2006).

The Liberal Party announced on Wednesday 31 August 2005 that it did not support the proposed development.

Suddenly, on Friday 2 September 2005, it was announced that the Walker Corporation had informed Premier Paul Lennon by letter that it would not be proceeding with the proposed canal estate at Ralphps Bay.

It was reported the proposal was shelved by the developer, "*on commercial grounds*". However, it seems likely that these "commercial grounds" were inextricably linked with the difficulty of moving ahead with the proposal if the Labor Party was not returned to majority government, and the fact that Labor was going to have great difficulty in returning three members in the electorate of Franklin, where Ralphps Bay is located.

In the event, Paula Wriedt MHA, the third Labor member in Franklin, was only returned to the Parliament in 2006 after a prolonged wait for the distribution of preferences, during which the preferences from all unelected Franklin candidates except Vanessa Goodwin were distributed.

The 2006 state election campaign was fought on the understanding that Walker Corporation's proposal was no longer an issue. The Minister then responsible, Judy Jackson, wrote to a constituent stating, *"The Government has no intention of revisiting any development proposal for Ralphs Bay."*

Had the Walker Corporation proposal been given Project of State Significance in the lead-up to the March 18, 2006 election, or had the Government failed to resolve the issue, it is unlikely that Labor would have returned 14 MHA's to the Parliament.

The following questions remain:

- Was a proper distance maintained between Walker Corporation's "commercial" decision to withdraw the proposal, and the likely difficulty of returning 14 MHA's to the Parliament, faced by the State Labor Government and Labor Party?
- Was there any discussion of these linked issues, between any representative/s of the Government or member/s of the public service, and the Walker Corporation?
- Was there already a plan in existence to bring the proposal back to the table, as soon as the 2006 state election was safely out of the way?
- If so, who was involved in discussions leading to the formulation of such a plan?

4.2 The reappearance of the "shelved" proposal to convert the Ralphs Bay Conservation Area into a canal housing estate

On Thursday 6 July 2006, Premier Paul Lennon announced to the Parliament the return of the Walker Corporation proposal, ten months and three days after it had been "shelved" in the lead-up to the state election.

He also, apparently, renamed the Ralphs Bay Conservation Area, 'Lauderdale Quay'. The Premier's Media Release on the subject clearly stated there had been a new application for a *'development at Lauderdale Quay.'*

Save Ralphs Bay Inc. contends that a government and its Premier should be able to make a clear distinction between a developer's proposed rebranding of an area of land and the existing Tasmanian place name for that area.

The Premier's duty is surely to represent Tasmania and Tasmanian interests first and foremost, leaving developers to represent their own interests, especially in such controversial and contentious circumstances.

Sue Neales' "Comment" article on page 4 of the *Mercury* 7 July 2006, headlined, *"It's dark in the closed Cabinet"*, listed the communications between the Walker Corporation and the State Government during June 2006, in which the company's intention to resubmit the proposal were set out.

Ms. Neales also stated the Walker Corporation had been questioned repeatedly by the *Mercury* during the previous six weeks, and the corporation had repeatedly denied the project had been revived.

On 6 September 2006, Sue Neales reported in the *Mercury*, *"Contrary to claims made by Tasmanian Premier Paul Lennon, Walker Corporation has admitted that its*

pullout from the Ralphs Bay canal housing project was always only temporary. It was also only ever about politics.”

Backing this up with quotes from Walker Corporation’s then divisional manager, Kevin Hunt, during a Legislative Council Ralphs Bay briefing session on 5 September 2006, Ms. Neales commented, *“Mr. Hunt’s frank admission that Walker Corporation never really abandoned its Ralphs Bay proposal last year contrasts with claims by Mr. Lennon that he was certain the company had quit Tasmania for good.”*

The following questions remain:

- At what stage did Mr. Lennon become aware of the Walker Corporation’s intention to resurrect the proposal?
- What discussions took place between representatives of the Walker Corporation and member/s of the Government or public service, in relation to the announcement and the timing thereof?
- If the “shelving” and reappearance of the Walker Corporation proposal was a sham designed to maximise the chances of returning Labor members to the Parliament without hindering the Walker Corporation’s development agenda, were members of the Government and public service aware of this possibility, and,
 - Was this legal?
 - Was this good governance?
 - Was this ethical?
 - Was this transparent or honest?

5. **The “Ralphs Bay Conservation Area Clarification Bill 2006” and the manner in which the true nature and intent of this Bill was represented to the community in the media, by the State Government**

On 6 July 2006, Mr. Lennon announced in the Parliament the reappearance of the Walker Corporation proposal and Cabinet’s decision to give it Project of State Significance status.

Mr. Lennon also foreshadowed action to “clarify” the boundaries of the Ralphs Bay Conservation Area, stating, “*The Government also will introduce legislation to clear up uncertainties over the boundaries of the conservation zone in Lauderdale Quay and to ensure the beach is protected.*”

The *Ralphs Bay Conservation Area (Clarification) Bill 2006*, tabled on Tuesday 29 August 2006, was one of the lowest points so far in the sorry story of the State Government’s deliberate actions to further the developer’s interests against the wishes of the Tasmanian community.

The intended effect of the Bill was to be the drastic reduction of the extent of the Ralphs Bay Conservation Area, by entirely removing the main shorebird critical feeding habitat on the sandflats, leaving only the narrow coastal strip below the houses along the northern edge of the bay.

This would have reduced the size of the Conservation Area by over 90%, and would have conveniently freed up most of the proposed footprint of the canal estate development by revoking its conservation status. It would also have given easier access for construction vehicles to the sandflats from the South Arm Highway.

At this time, the Ralphs Bay Conservation Area was bounded by the beach and roadside along the South Arm Highway to the east; the beach and a narrow strip of reserved land below houses to the north, the low water mark to the west, and a line returning to the shore to the south.

The “spin” put on the *Ralphs Bay Conservation Area (Clarification) Bill 2006* by the State Government was deceptive in the extreme. The Government had allegedly discovered the long narrow strip of land bordering the South Arm Highway was privately owned, and it made much of this “mistake” in the media. For some mysterious reason, this “mistake” along the roadside conveniently justified the excision of the wide expanse of the sandflats from the Conservation Area.

The Government’s “spin” on this situation appeared to be a deliberate “smoke and mirrors” exercise to distract public attention from the true intent and consequences of the Bill.

This was not transparent, honest or ethical dealing with the public. Was it even legal for a Government to promote a Bill tabled in the house by “talking up” a circumstance which provided the pretext for this dubious piece of legislation, and evading mention of its main consequence?

In brief, the facts were:

- There would have been no dispute had the Walker Corporation's lawyers not questioned the boundary with the Lennon Government during the developer's first, failed attempt to present its canal estate plan.
- The legal extent of the Ralphs Bay Conservation Area had been in dispute since 4 July 2005. Then Environment Minister, Judy Jackson, announced, on the advice of the Solicitor General, she had moved to 'clarify' the boundary to remove the sandflats. In our opinion, backed by legal advice, this decision was made in contravention of standard Australian/New Zealand surveying practice. The advice of the Surveyor-General should have been given more weight than that of the Solicitor-General, on this surveying and mapping matter.
- Save Ralphs Bay Inc. sought legal advice at the time from the Environmental Defenders' Office. A comprehensive brief was prepared, setting out a very clear argument for the Minister to reverse her decision. Minister Jackson acknowledged conflicting legal advice and said the matter would be referred to the Crown Lands Assessment and Classification (CLAC) process for Clarence municipality. Around the time of the March 2006 election, the Ralphs Bay Conservation Area matter was removed from CLAC's agenda.
- In Parliament on Thursday 31 August 2006, Minister David Llewellyn confirmed the government had no legal advice recommending the boundary be moved from low water mark to high water mark, and that the Bill was, "*a political decision*" made by Cabinet. (Hansard, 7.30 pm). The Minister also confirmed formal advice had not been sought from the Surveyor General.
- The Hansard for Second Reading of the Bill on that day records that Mr. Llewellyn said, "*In subsequent legal advice, however, the Solicitor-General has indicated that the conservation area would more likely than not extend to the actual 'low water mark' in Ralphs Bay, if it were the subject of litigation and not be restricted to the area bounded by black lines on plan 4713*".
- A Legal Opinion written by Duncan Kerr MHR SC on 1 September 2006 set out the history of the reservation and stated, "*the proposed removal of conservation area status of the large protected area of land extending to low water mark will result in a substantial derogation from the original reservation made under the Crown Lands Act 1976 and will have material legal and environmental consequences including with respect to Commonwealth interests pursuant to the RFA agreements and legislation*".

He also stated, "*That the Ralphs Bay Clarification Bill (2006) has been drafted to remove reference to the area of land to low water mark must therefore be for an un-stated and ulterior motive – because getting rid of the inter-tidal zone's status as a conservation area is neither legally necessary to permit the Commission to assess any proposed project of state significance nor is it consistent with the purposes of the establishment of the Ralphs Bay conservation area*".

Mr. Kerr then listed four possible ulterior motives. In conclusion, he said, *“there is no demonstrated need for, the provisions of the Ralphs Bay (Clarification) Bill 26 of 2006 as currently drafted. There are substantial reasons of legal principle to object to it”*.

As Cassy O’Connor, then Communications Coordinator for Save Ralphs Bay Inc., put it:

“This bill will undo twenty-four years of understanding by government mapmakers, who to this day depict the Ralphs Bay Conservation Area at Lauderdale as extending to low water mark.

“We have a comprehensive legal brief on this subject which makes it clear the Lennon Government acted in undue haste in seeking to shrink the Conservation Area - at the prompting of Walker Corporation’s lawyers - last July. The Government knows it’s on the shakiest legal footing, and that’s why it has put this obnoxious, anti-environment bill forward.

“There is no question it was the original intent of the Crown Lands Act Order of 1982, creating the Ralphs Bay Coastal Reserve (which became the Conservation Area under the RFA Act 1998, ‘by name change only’) to include the area to low water mark. This was admitted by then Lands Minister, Lyons MHR, Dick Adams, on ABC radio news a fortnight ago.

“If passed by the Parliament, this bill will make sure the conservation values of Ralphs Bay are not adequately assessed by the RPDC, because it would just be another piece of Crown Land.

“If the government is so sure the sandflats don’t belong in the Conservation Area, let that be tested beyond the raucous reach of partisan politics, and allow a court of law to come to an evidence-based conclusion.

“The Tasmanian Conservation Trust and Save Ralphs Bay Inc. have requested the State Government fund a test case on the boundary question in the Supreme Court. We submit this is a far more legitimate approach to what is a legal question. Naturally, this request has been ignored in the Lennon Government’s rush to please Walker Corporation.”

Mr.Kerr’s Legal Opinion can be viewed in the September 2006 section of the Archive in the Save Ralphs Bay website at www.saveralphsbay.org

It was a great disappointment to members of the Tasmanian community when the Labor and Liberal MP’s in the Lower House of the Tasmanian Parliament voted as one to pass the *Ralphs Bay Conservation Area (Clarification) Bill* on 31 August 2006.

It was then left to the Legislative Council to take note of the briefing material provided on the legal objections to the Bill, and prevent the slashing of the size of the Ralphs Bay Conservation Area from around 90 hectares to 5.489 hectares. This was achieved in a compromise amended Bill, which, in an unprecedented move, handed the Parliament’s power to vote on the creation or revocation of a Conservation Area to the Resource Planning and Development Commission. The current status of the Ralphs Bay Conservation Area is unknown, but its eventual size may be almost double the original size, at 171 ha.

However, the RPDC has the power to excise from this Conservation Area whatever is “necessary or convenient” if the canal estate development is approved. Until that time, the conservation status of the area is undefined, and it is a concern of the community that the Walker Corporation will attempt to use this fact to deny the existence of the conservation values of the sandflats during the assessment of its proposed conversion of this area into a canal housing estate.

Save Ralphs Bay Inc. contends this whole episode represents the misuse by a Government of its powers, in order to give preferential treatment to a developer proposing a highly unpopular conversion of Crown land into a particularly environmentally destructive style of property development, in defiance of the expressed wishes of the Tasmanian people.

Is this good governance? Will the new structures put in place following the present inquiry into ethical conduct provide mechanisms to prevent or challenge such conduct by future Tasmanian State Governments? What consequences will future Tasmanian Governments face, if found to have acted in such a manner when framing and promoting legislation, or if found to have furthered the interests of commercial entities rather than allowing proposals the opportunity to be assessed in an open and transparent manner, within the legislative framework of the day including the existing reservation status of Crown Land?

6. The refusal by then Planning Minister Steve Kons MHA to allow the Resource Planning and Development Commission (RPDC) to assess a Draft Planning Directive banning canal estate developments, contrary to the Commission's recommendation

In October 2006, the Resource Planning and Development Commission (RPDC) recommended to Planning Minister, Steve Kons, that an assessment should be undertaken into a statewide canal estate ban across local government planning schemes.

Under the Land Use Planning Approvals Act (LUPAA) 1993, Save Ralphs Bay Inc. lodged a Draft Planning Directive with the RPDC in August 2006 to prohibit canal estates in Tasmania, consistent with a canal estate ban in the Kingborough Planning Scheme 2000. Under LUPAA, the RPDC is required to work towards consistency across Tasmania's local government planning schemes and Save Ralphs Bay Inc. argued that the bar now needs to be set higher in order to protect Tasmania's coastal values.

If implemented, this Draft Planning Directive would not affect the Project of State Significance (PoSS) assessment for Tasmania's first proposed canal estate development, in Ralphs Bay. A PoSS over-rides local government planning schemes. It would however, set an important benchmark for future coastal management in Tasmania.

Mr. Bill Edmunds, Chair of Save Ralphs Bay Inc., said, *"The RPDC has accepted the legitimacy of our argument and recommended to the Minister that an assessment should be undertaken. It will be very interesting to see how he responds to this advice from the 'independent umpire'.*

"It would seem to us, that the Minister has only two choices - to accept, or reject, the independent umpire's recommendation. The RPDC should be allowed to investigate why Kingborough Council has implemented a ban, and why NSW banned canal estate construction in 1998."

Canal estates were banned in NSW in 1998 (S.E.P.P 50) because they cause damage to fisheries, acid sulphate soil problems, wetland habitat destruction, loss of rare flora and fauna, coastal erosion, water quality problems, household runoff pollution, regular dredging, mosquito and midge storms, and loss of public access to the foreshore.

In early January 2007, Planning Minister Steve Kons rejected the RPDC's recommendation that it should assess Save Ralphs Bay Inc.'s Draft Planning Directive proposing a statewide canal estate ban in local planning schemes.

Mr Edmunds said the Minister had written to SRB Inc. not only rejecting the RPDC's recommendation, but adding, *"I have asked my department to consider a Planning Directive that incorporates criteria for assessing future canal development"*.

"The Lennon government is clearly giving the green light to canal estate developers," said then Save Ralphs Bay Inc. Communications Coordinator Cassy O'Connor. *"It refuses to do its homework on canal estate developments and is content to ignore*

the reasons behind the New South Wales canal estate ban. Now it won't let the independent umpire do the research either.

"Minister Kons' response shows his reckless and unthinking disregard for the damage caused by canal estate developments, and a lack of concern for coastal values in Tasmania," Ms O'Connor said.

"On 23 July this year, Mr Kons accused SRB Inc. of engaging in scare tactics, and said ...'By making Lauderdale Quay a project of state significance the politics and rhetoric are taken out of it by allowing the independent RPDC to assess the project on its merits. I call on groups, like (SRB Inc.), to support the entirely independent process.'

"Our question to the Minister and his colleagues is; 'Why won't you respect the RPDC's recommendation that it be allowed to assess our Draft Planning Directive?' The Commission has been denied an important opportunity to fulfil its key inquisitorial role to the benefit of coastal planning in Tasmania."

Save Ralphs Bay Inc. contends that the RPDC, as Tasmania's peak planning body, should not have been prevented from carrying out an assessment of the merits or otherwise of the Draft Planning Objective, and that politicians should not interfere to block assessments recommended by the Commission.

7. **Actions (and inaction) of the State Government and its members in relation to the *Tasmanian Marine Protected Areas Strategy 2001* and the RPDC's *Inquiry into the establishment of marine protected areas within the Bruny Bioregion***

7.1 State Government failure in regard to the education and awareness requirements of the *Tasmanian Marine Protected Areas Strategy 2001*

The Inquiry into the establishment of marine protected areas within the Bruny Bioregion began with a Reference to the RPDC from then Minister Judy Jackson on 6th June 2005.

The Reference stated that the Inquiry was to be carried out, "Acting pursuant to the *Tasmanian Marine Protected Areas Strategy*".

The Primary Goal of the *Tasmanian Marine Protected Areas Strategy 2001* is,

"to establish and manage a comprehensive, adequate and representative system of marine protected areas, to contribute to the long-term ecological viability of marine and estuarine systems, to maintain ecological processes and systems, and to protect Tasmania's biological diversity."

In support of this goal, the Strategy makes clear that,

"Education and awareness of this Strategy is therefore of the utmost importance. All parties must be well informed. The aims of the strategy must be clearly defined and understood. It is essential that all stakeholders who may be involved in, or affected by, Marine Protected Area development and/or management and the suite of issues that relate to them, be identified and a consultation and education process established ... the education priorities ... are as follows."

- ***Develop an education and community awareness program to promote Tasmania's marine biodiversity, habitats and ecosystems.***
- ***Develop an education and community awareness program to promote the role and benefits of establishing Marine Protected Areas.....***

The awareness and education component of the program will develop different types of materials for different audiences, including schools, resource users, government agencies, community and various non government groups. A wide range of education tools can be used, for example, public meetings, brochures, booklets and educational videos."

Save Ralphp Bay Inc. queries to what extent (if any) the State Government took up this public education challenge. We are not aware of any activities of this sort. We contend that the State Government has failed in this responsibility, with the predictable result that the fear and anxiety generated in some sections of the community following the release of the Draft Recommendations of the Inquiry was largely ill-informed and based on incorrect assumptions.

Instead of correcting these assumptions, members of the government encouraged the community to believe that the RPDC was at fault.

For instance, on Tuesday 2 October 2007, Lin Thorp MLC was reported in the Mercury to have said that the State Government did not agree with the RPDC's Draft recommendations and that a review of its role was under way.

On Wednesday October 24 2007, the Mercury reported that Ministers David Llewellyn and Steve Kons had pre-empted the final result of the Inquiry and suggested the RPDC had gone outside its brief. A statement from Mr. Llewellyn confirmed that the Government, "would not support any recommendation from the RPDC that would adversely affect recreational or commercial fishing".

This is clearly a nonsensical position in view of the Primary Goal of the *Tasmanian Marine Protected Areas Strategy*, and makes as much sense as refusing to restrict the activities of hunters and timber cutters in terrestrial protected areas. Why was the Inquiry carried out at all, if the State Government's chosen representative on the issue refused to countenance any restriction of fishing in marine protected areas?

The suggestion that the Commission had gone outside its brief implies the Ministers concerned were unfamiliar with the Primary Goal of the *Tasmanian Marine Protected Areas Strategy 2001*, and the step by step process prescribed by the Strategy, which the RPDC followed to the letter. Perhaps the State Government's education campaign needed to start with its own members?

Another alternative is that the Ministers were aware of the terms of reference of the RPDC's Inquiry but had no respect for the proper process that was being carried out, and certainly had no intention of explaining the process to the Tasmanian community, or explaining that the Reference to conduct the Inquiry had been given by the State Government, in accordance with its commitments under *Tasmania Together*, the *Tasmanian Marine Protected Areas Strategy* and Australia's national and international commitments in regard to the creation of marine protected areas.

The Inquiry cost Tasmanian taxpayers \$500 000. Although the RPDC published the prescribed advertisements advising of each stage of the Inquiry, and inviting comment on the Background, Interim and Draft Recommendations reports, the Government of the day did nothing to educate the community in relation to the objectives of the *Tasmanian Marine Protected Areas Strategy*, the stages being followed by the Inquiry, the national and international context or the state's commitments in this regard.

What are the ethics of the State Government's setting the RPDC tasks which it does not explicitly support through public education programs, and undermining the Commission in the media when it carries out its appointed tasks in accordance with the prescribed terms of reference?

What are the ethics of a State Government's spending \$500 000 on an Inquiry into the establishment of marine protected areas, while maintaining that the hunting and killing of marine organisms must not be restricted in such areas?

What are the ethics of a State Government's giving a preferential response to constituents who wish to hunt and kill marine organisms, while ignoring the submissions of constituents who support the creation of a limited number of "no-take" reserves in the marine environment?

What are the ethics of a State Government's allowing Members for Rumney and Lyons to speak publicly against the Inquiry and its proposed restrictions, when most or all of the public outcry against the reserves came from within the Tasman Peninsula, and these Members clearly had a conflict of interest?

Where was the voice of the Minister for the Environment and Parks at this time?

7.2 Where was the Parks & Wildlife input?

In its Final Recommendations Report, the RPDC states:

*"The Commission **recommends that MPAs be reserved under the Nature Conservation Act 2002 unless the primary objective for a particular MPA is protection of living marine resources.**"*

It goes on to say:

*"The Commission re-iterates the recommendation that it made in the Final Recommendations Report for the Inquiry into the Establishment of Marine Protected Areas within the Davey and Twofold Shelf Bioregions (2003), that: **"The National Parks and Reserves Management Act 2002, the Nature Conservation Act 2002 and the Living Marine Resources Management Act 1995 be amended to enable biodiversity conservation of marine flora and fauna to be managed by the Director of National Parks and Wildlife."***

The community heard repeated commitments from Minister David Llewellyn that, *"the Government will not be agreeing to any recommendations that restrict or prevent traditional fishing activities of recreational or commercial fishers."* However, the silence from Parks and Wildlife was deafening. What is the explanation for this, and was it good governance?

In its Final Recommendations report, the RPDC noted:

"The Commission found that particular Government agencies were very cautious about contributing to the inquiry, so as not to be seen to be endorsing any particular views or outcomes. Despite direct requests, Parks and Wildlife Service (the likely managing authority) did not provide location-specific information on management requirements, and TAFI (the likely performance-monitoring agency) did not provide advice on areas most suitable as scientific reference sites or potential implications for fisheries."

Save Ralphs Bay Inc suspects that Parks and Wildlife did prepare a submission to the Inquiry. What happened to it?

7.3 Why did Primary Industry and Water Minister David Llewellyn take over the final public consultation?

“Biodiversity conservation of marine flora and fauna to be managed by the Director of National Parks and Wildlife” does not fall within Mr. Llewellyn’s portfolio.

Primary industry has no relevance to the Primary Goal of the *Tasmanian Marine Protected Areas Strategy 2001*, which provided the terms of Reference for the Inquiry.

Fishing is relevant to less than two of the eleven dot-points in the Secondary Goals of the *Tasmanian Marine Protected Areas Strategy 2001*, which provided the terms of Reference for the Inquiry.

Mr. Llewellyn made it clear he was personally opposed to the creation of areas of the marine environment protected in any way from the activities of fishers.

Is it good governance if the Primary Industry Minister’s personal preference overrides the RPDC’s recommendations following a long, expensive, thorough Inquiry? We contend that it is not.

7.3.1 Poor standards of professionalism in Mr. Llewellyn’s department

Why was the public not provided with accurate information at the DPIW website, after Mr. Llewellyn took over the consultation on the RPDC’s Final Recommendations?

The DPIW website clearly showed that Mr. Llewellyn’s department had little familiarity with the Inquiry. The site initially put up a map of *Bruny Island* in its “comments invited” section. Following public feedback, this was replaced with a map of the Bruny Bioregion.

However, the site continued to refer to the *“Bruny Island Bioregion”*, as late as Monday 31 March (halfway through the public comments period):

“ [Bruny Marine Reserves Report](#)

Public consultation until 16 April 2008 is welcomed for this report about the establishment of marine protected areas within the **Bruny Island bioregion.**”

(emphasis added)

7.3.2 Why did the State Government consider it appropriate for the Minister for Primary Industry and Water to personally lobby fishermen on the MPA issue, during the final public comments period?

It appears that every recreational fishing license-holder in the state received a letter from the Minister, advising them of the public comments period and reiterating, *“the Government will not be agreeing to any recommendations that restrict or prevent traditional fishing activities of recreational or commercial fishers.”*

If it was prepared to go this expense, why did the State Government not send a similar letter to every National Parks permit holder?

The State Government's actions in regard to the Inquiry into the establishment of Marine Protected areas are highly concerning for Save Ralphs Bay Inc., because they demonstrate:

- a lack of deep commitment to proper environmental planning processes
- an unwillingness to support proper environmental planning processes with public education and awareness programs
- a lack of familiarity with the Inquiry process, or lack of respect for it
- a willingness to undermine the RPDC in public
- apparent disregard for the input of key agencies

The proposed canal housing estate in Ralphs Bay is Tasmania's fifth Project of State Significance, to be assessed by the RPDC.

The last Project of State Significance was the Pulp Mill. We know how much regard the State Government had for the thorough assessment of this project by the RPDC.

Members of the Government insisted, in 2004 and 2005, that Save Ralphs Bay Inc. should trust the RPDC and its thorough, transparent processes. We do, and we have been highly impressed by the *Inquiry into the establishment of Marine Protected Areas within the Bruny Bioregion*.

We only hope that the State Government will, somehow, acquire the political will to desist from interfering in the RPDC's Lauderdale Quay assessment process.

Conclusion

Over almost four and a half years, from March 2004 to the present, the supporters of Save Ralphs Bay Inc. have repeatedly been shocked and dismayed by the actions of the Tasmanian State Government.

In summary, this has been due to:

- our experience of the Government's *modus operandi* in its dealings with the Walker Corporation;
- the contrast between public statements of Government representatives in the media and the apparent realities;
- its readiness to make an in-principle commitment to the sale of Crown land and an important Conservation Area without prior community consultation;
- the ease with which Government ignores (or is ignorant of) its own policies;
- the ease with which the Government first promised a community consultation on the canal estate proposal and then ignored its results;
- Premier Lennon's willingness to meet Walker Corporation representatives but refusal to meet with his own concerned constituents;
- the curious withdrawal and reappearance of the Walker Corporation proposal, conveniently timed in relation to the 2006 election campaign;
- the true intent and apparent misrepresentation of the *Ralphs Bay Conservation Area (Clarification) Bill 2006*;
- the insistence that the RPDC should be the "independent umpire" and be allowed to assess Walker Corporation's proposal as a Project of State Significance, and yet the Government's refusal to allow the RPDC to follow its own recommendation and assess the merits or otherwise of a Draft Planning Directive banning canal estates in Tasmania; and finally,
- the State Government's actions and inaction in relation to the *Inquiry into the establishment of marine protected areas within the Bruny Bioregion*, and the implementation of the *Tasmanian Marine Protected Areas Strategy 2001*.

Save Ralphs Bay Inc. looks forward to the establishment of an independent body with the power to shine a searchlight on the Tasmanian Government and the Public Service sector, to highlight incidences of unethical, unprofessional and illegal conduct, and to impose appropriate sanctions, as well as referring matters onward for further investigation where appropriate.

We believe Tasmania is fundamentally a decent state, inhabited by decent and well-intentioned people and that Tasmania's politicians and public servants will be well served by a body with investigative powers, which aims to keep them honest and motivates them by imposing sanctions in cases where individuals stray. In this way, a strong democracy will be protected and the most honest and straightforward of politicians and public servants will be strengthened in their resolve to act at all times in the public interest.

