



Our Ref: 22.20

29th April 2005

Swan River Trust
PO Box 6740
Hay St, East Perth
WA 6892

Attn: Darryl Miller

Dear Sir,

Draft Swan and Canning Rivers Management Bill 2005

The Urban Development Institute of Australia (UDIA) is the peak industry body representing the urban development industry in Western Australia. It is in this capacity that we respond to the draft Swan and Canning Rivers Management Bill.

UDIA recognises the need to ensure that the quality of the Swan and Canning River system is improved and protected for the long term benefit of the Western Australian community.

However we fundamentally oppose the draft Bill on the basis that the amendments it proposes are unnecessary and do not provide for the actions which we believe are urgently needed to mitigate the water quality and ecological crisis facing the river system.

UDIA believes that the Bill will unnecessarily create overlapping land use controls with existing legislation which already has sufficient scope and authority to manage water quality issues in the Swan Canning catchment. The issue is not that the legislation is inadequate, but rather that government does not have a coordinated, funded and prioritised program of physical works to arrest excessive nutrient discharges.

The introduction of new legislation will only lead to increased complexities in the planning and environmental approvals processes and will have the effect of diverting attention and funds away from where they are urgently and critically needed: in implementing drainage and shallow groundwater management technologies and devices to immediately reduce nutrient loading to the Swan River.



1.0 Objectives, Principles and Relationship to Other Acts and Land and Water to which Act Applies

The Bill proposes that, as well as the Trust, certain other public authorities are required to have due regard to the objectives and principles of the Act in performing their functions (section 7(1)). These include the West Australian Planning Commission and local governments (see Schedule 5 of the Act).

The new Act also makes significant changes to the current size of the catchment areas. The provisions within the proposed legislation will be applicable to a much larger area, which will certainly have an impact on future development projects.

Despite the fact the Act does not intend to impose development controls within the catchment areas (except those that occur within the development control areas) there is no doubt that there will eventually be further restrictions imposed.

UDIA Response

It is well recognised that existing planning and environmental legislation, regulation and policy is highly effective in ensuring that nutrient discharge from new development is minimised.

UDIA therefore does not believe that there is a need for the functions of these agencies to be duplicated by the Swan River Trust within the extended catchment area. This will only serve to further complicate what is already a highly complex approval process.

In addition it is clear that new urban development is not the principal or even a major source of nutrient inputs to the Swan River waters.

The urban development industry currently produces new lots in the proportion of around 3-4% of the existing housing stock in the general metropolitan catchment of the Swan River and remains firmly committed to reducing the nutrient discharges from new development areas. There are a large number of examples on the ground where it can be demonstrated that new developments are implementing best practice in urban water management to minimise nutrient export.

UDIA therefore submits that the proposed legislation should not impose additional restrictions on new development activities which have little or no impact on the Swan and Canning River systems.

Rather we strongly believe that Swan River management attention should be focused on reducing nutrient input from the older existing urban areas within the metropolitan region and the rural land areas within the Avon and Ellen Brook catchment, which are well known as the principal sources of excessive nutrient inputs. State government publications clearly confirm this fact.

This action should take the form of a fully government funded drainage and shallow groundwater remediation program, comprising physical works to remove phosphorus and nitrogen from drainage and shallow groundwater inputs to the river.

2.0 General Responsibility, Functions and Powers of the Trust

Under section 24(1), the Trust will have the overall responsibility for the maintenance of the ecological and community benefits and amenity of the development control area and the River Park including:

- a) the preservation and enhancement of the quality of the environment of those areas;
- b) the control and prevention of any act or omission which may adversely affect the ecological and community benefits or amenity of those areas.

Under the proposed section 25, power of the Swan River Trust will be extended to coordinating and promoting the activities of other bodies that have functions in relation to the *catchment area*, that is, a much larger geographical area. These other bodies could include, for example, local governments or the WAPC.

In addition, the functions of the Trust will now include:

- establishing targets for ecological and community benefits and amenity and mechanisms for evaluating the achievement of those targets;
- coordinating and promoting the development and implementation of strategies and programmes in relation to the rivers;
- assessing and reporting to the Minister on the state of the rivers.

The power to establish ecological targets is quite broad in that it is not limited to the Riverpark or the development control area. Arguably, therefore, the power extends to establishing ecological targets in the broader catchment area, which could significantly impact on the development industry.

UDIA Response

SRT as a Co-ordinating Body

UDIA does not support this function on the basis that it is not appropriate, practical or necessary for the Swan River Trust to act as co-ordinator of other bodies that have far greater responsibilities and functions in the catchment area. This would be tantamount to ‘the tail wagging the dog’.

We believe that organisations such as the Western Australian Planning Commission (WAPC), Department for Planning and Infrastructure (DPI), the Department of Environment (DOE) and the Water Corporation as well as relevant local authorities

already provide the necessary framework for the management of land and natural resources within the metropolitan region. There is no need to duplicate these functions.

In addition, as the state planning and primary approvals agency, it is evident that the WAPC is the most appropriate and best placed organisation to co-ordinate the management of the region.

Involving yet another agency in the planning or environmental process will only serve to further complicate what is already a long and problematic approvals system.

Extension of General Responsibilities

UDIA opposes the extension of the general responsibilities of the Trust on the basis that it is too broad and is likely to focus the attention of the agency away from what we believe should be its primary function and responsibility: ensuring and maintaining a high level of water quality in the Swan and Canning Rivers.

Excessive levels of nutrients within the river are known and widely acknowledged as the principal ecological problem facing the Swan River estuarine system, and it is our view that redressing this matter in a timely, prioritised and properly funded manner should be the focus of any review of the Swan River Trust and its activities by concentrating on physical works to reduce nutrient inputs and consequent algal blooms and fish kills.

As previously outlined, UDIA strongly believes that there is a serious need for the State Government to address this problem by refocusing its efforts into devising, funding and implementing programs of drainage and land use management works to reduce the impact of known sources of excessive nutrient inputs.

Previous governments have had significant success in addressing large scale water quality problems in important waterways:

- the *Nodularia* problem in Harvey Inlet and the choking of Peel Inlet by *Chlodophera* was solved by the construction of the Dawesville cut,
- Cockburn Sound no longer suffers catastrophic wide spread algal blooms and epiphytic smothering of seagrass beds after industrial discharges were substantially reduced,
- Princess Royal Harbour was closed to fishing and suffered serious sea grass losses, however, the Harbour is now again open to fishing and pollutant discharges and consequent algal blooms and sea grass loss have been arrested.

The founding conditions for these activities were that each was a government priority and was adequately funded by State Government and effectively coordinated with the private sector.

The Swan Canning estuarine system is no less important than any of these waterways and in fact as the States first Icon, as proclaimed by the Premier last year, is in some facets more important.



With this background and in this context, it is truly disappointing to observe the attitude in government agencies which appears to be that the water quality and ecological crisis in the Swan River is beyond a ready practical solution.

We therefore call on the State Government to commit to appropriate funding and action to ensure that water quality and ecological problems within the Swan River are mitigated in a reasonable time scale.

3.0 Management Documents

3.1 Regulations may prescribe environmental quality targets

The catchment area is a large area of land, encompassing the entire metropolitan area. Hence, regulations that prescribe targets for the catchment area could have a significant impact on the urban development industry.

Under section 48(3), before regulations are made, the Trust is required to consult with any public authority or person which or who is, *in the opinion of the Trust*, likely to be affected in a material way by the regulations. The requirement to consult is, therefore, at the discretion of the Trust. This could potentially lead to a situation where the development industry was not consulted prior to regulations being made. Further, it will make it more difficult to challenge an instance of non consultation.

UDIA Response

UDIA requests that consultation with the development industry is deemed mandatory when new regulations are drafted. The development industry must have the opportunity to make a submission on all new regulations. The onus should not be on the Swan Trust to decide what issues may affect the development industry; the industry itself should have the opportunity to ascertain whether it will be impacted by new regulations.

3.2 Management Documents

Until a further river protection strategy is made under Part 4 of the Act, the Comprehensive Management Plan and Implementation Strategy for the *Environmental Protection (Swan and Canning Rivers) Policy 1988 (Riverplan)* will be taken to be the river protection strategy for the purposes of the Act (s50).

Under the current Swan River Trust Act, the Trust is required to perform its functions in accordance with the management programmes. Under the new Act, this requirement is extended. Section 63(2) provides that Schedule 5 authorities (including the WAPC and local governments) must perform their functions that affect the development control area or the Riverpark in accordance with the management documents.

UDIA Response

UDIA is of the opinion that these provisions along with those previously discussed will provide the Trust with wide ranging power over planning issues and other facets of development, impinging on the current jurisdiction of other authorities and will divert attention and funds away from where they are urgently and critically needed: in implementing drainage and shallow groundwater management technologies and devices to immediately reduce nutrient loading to the Swan River

4.0 River Protection Notices

Currently, provisions in relation to river protection notices are not included in the current Swan River Trust Act.

Under section 85(1) of the new Act, if the General Manager of the Trust believes on reasonable grounds that action is required to protect, restore, or maintain the ecological and community values and amenity of the Riverpark, the General Manager may recommend to the Trust that a river protection notice be given to an owner or occupier of land in the *catchment area* in relation to that action.

The recommendation must be accompanied by a report setting out, among other things, the reasons for the recommendation (section 85(2)). Further, the person to whom it is proposed to give the notice must be given the opportunity to show cause as to why the recommendation should not be made (section 85(3) and (4)). River Protection Notices may be made by the Trust under section 86, after considering the report and recommendation and giving the person to whom it is proposed to give the notice a reasonable opportunity to comment.

The river protection notice must specify the purpose for which it is given. The notice may impose any requirement reasonably required for the purpose for which the notice is given, for example:

- a requirement that the person discontinue, or not commence, a specified activity indefinitely or for specified period or until further notice from the Trust; or
- a requirement for a person to take specified action in a specified way, and within a specified period.

Under section 95, it is an offence not to comply with a river protection notice. The penalty for non compliance is \$50,000.00.

The Explanatory Memorandum indicates that River Protection Notices are intended to deal with diffuse source pollution and its cumulative effects. The notices are intended to provide a flexible mechanism tailored to specific circumstances where management standards are inadequate to protect the ecological and community benefits and amenity of the *Riverpark* (see EM at 23). A River Protection Notice can, however, be issued to the owner of land within the *catchment area*. As discussed above, the *catchment area* encompasses a large area of land.



UDIA Response

Where a river protection notice is issued in relation to land, this will clearly limit the activities that may be undertaken on that land. There are provisions in the Act which allow a memorial to be lodged in relation to land the subject of a river protection notice. The notice will, therefore, be binding on new owners of the land.

The Bill and supporting documentation fails to provide clear terms of reference or criteria to explain the proposed form or purpose of River Protection Notices.

In addition, we do not believe that the notice provisions are required due to the extensive environmental protection mechanisms already provided for in Part V of the Environmental Protection Act. In particular, the provisions of sections 65 to 73B of the Environmental Protection Act appear wide enough for the situations proposed to be addressed by the River Protection Notice.

5.0 Right of Appeal

UDIA requests that the policy include provision for landowners to appeal to the Minister in regards to development approval decisions in the development control area, River Protection Notices and enforcement.

5.0 Conclusion

UDIA does not support the draft Swan and Canning Rivers Management Bill.

The property development industry is committed to fulfilling the environmental expectations both from a number of government bodies and the community as a whole. Adding an extra layer to an already complicated cross section of agencies that developers must deal with will only make it more difficult for private industry and the public sector to work together to achieve the best outcomes for our rivers and for sustainable development.

We believe that the draft Bill will have the effect of diverting attention and funds away from where they are urgently and critically needed: in implementing drainage and shallow groundwater management technologies and devices to immediately reduce nutrient loading to the Swan River.

UDIA calls on the State Government to provide the leadership which is urgently needed to improve water quality in Western Australia's first Icon by committing to the implementation of drainage and shallow groundwater management technologies and devices to immediately reduce nutrient loading to the Swan and Canning River systems.



UDIA would be happy to meet with appropriate state government organisations including the Swan River Trust and the Department of Environment to further discuss our views in relation to the management of the Swan River system and the potential to implement appropriate technologies to produce effective and timely water quality results.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Marion Fulker', is positioned below the text 'Yours sincerely'.

MARION FULKER
Executive Director