

[REDACTED]

From: [REDACTED]
Sent: Friday, 10 November 2017 11:11 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: 170731 DBCA Canal Rocks - Query on liability exposure

Hi [REDACTED]

Thanks for the call this morning and this email confirmation. I look forward to receiving the additional information mentioned.

I would also like to clarify RiskCover's position regarding insurance cover for this facility and confirm that we are continuing to provide insurance cover to the Department for this facility.

It appears that the comments I made regarding insurance cover in my email of 1 August 2017 may have been misinterpreted. To be clear, RiskCover has not made any change to the insurance cover we provide.

There was always the expectation that the Department and RiskCover would have ongoing dialogue on this matter before any decision on insurance cover was reached.

Regards

[REDACTED]

 [REDACTED] | [REDACTED]
221 St Georges Terrace Perth WA 6000
[REDACTED] | riskcover.wa.gov.au

From: [REDACTED]
Sent: Friday, 10 November 2017 10:03 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: 170731 DBCA Canal Rocks - Query on liability exposure

[REDACTED]

Just a quick email to confirm our discussions this morning about Canal Rocks boat ramp and jetty. As outlined, since receiving your advice (below) regarding cover for accidents / injuries at the boat ramp, the Department of Biodiversity, Conservation and Attractions has commenced steps to close it. This is a controversial issues and we have provided briefings and advice to the Hon Minister on it. At this stage, the position is that the boat ramp will be closed to the public, but will remain open for use by emergency services. The Minister has indicated to stakeholders and the community that the ramp will be closed, and has requested that the department develop protocols for the continued use by emergency services. At a meeting to discuss this yesterday, concern was raised by the Department of Fire and Emergency Services representative, who manage Volunteer Marine Rescue services that their personnel may not be covered for training and emergency use of Canal Rocks because they are also covered by RiskCover. It is likely that they will contact RiskCover for advice.

The Department believes that we can establish a set of guidelines for use by the Naturaliste Volunteer Sea Rescue or other approved emergency services groups to use the boat ramp and jetty. This would involve consideration of conditions for launching, recovery of vessels from the site and other management

arrangement. It would include consideration of the use of alternative sites at Gracetown or inside Geographe Bay should sea conditions mean that Canal Rocks is not safe. We believe that the Volunteer Marine Rescue skippers should be suitably qualified to judge this, given that conditions at the ramp can change relatively quickly. Given that the personnel on the boat are only part of the wider organisation, the capacity to move the vehicle and trailer to another boat ramp if necessary should be achievable.

I expect that once a set of guidelines are developed we would share these for comment, to ensure that RiskCover's concerns are able to be satisfied. I expect that we will have something prepared in the next week or so.

Thanks for your time to discuss the issue.

Cheers,

[Redacted]

From: [Redacted]
Sent: Wednesday, 2 August 2017 11:10 AM
To: [Redacted]
Cc: [Redacted]
Subject: RE: 170731 DBCA Canal Rocks - Query on liability exposure

[Redacted]

From: [Redacted]
Sent: Wednesday, 2 August 2017 10:56 AM
To: [Redacted]
Cc: [Redacted]
Subject: RE: 170731 DBCA Canal Rocks - Query on liability exposure

[Redacted]

[Redacted]

[Redacted]

[Redacted]

From: [Redacted]
Sent: Wednesday, 2 August 2017 9:39 AM
To: [Redacted]
Cc: [Redacted]
Subject: RE: 170731 DBCA Canal Rocks - Query on liability exposure

Hi [Redacted]

RiskCover have also asked for us to confirm our action on this in due course.

[Redacted]

From: [REDACTED]
Sent: Wednesday, 2 August 2017 7:29 AM
To: [REDACTED]
Subject: FW: 170731 DBCA Canal Rocks - Query on liability exposure

Hi everyone

Confirmation from RiskCover on their, as expected, stance on this issue.

We do not have insurance cover against any claims arising from this facility.

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: Tuesday, 1 August 2017 4:02 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: 170731 DBCA Canal Rocks - Query on liability exposure

Hi [REDACTED]

This matter was referred to me for consideration.

To properly understand the context and risks associated with this matter it would be useful to sight the report prepared by MRA.

Based on the information provided, the exchange of emails between [REDACTED] and [REDACTED], there appears to be clear and imminent risk of serious injury to users of these facilities. This view is based on the expert opinion of [REDACTED] as articulated in his email dated 15 June 2017. In this email [REDACTED] also states that MRA is unable to endorse the proposed management of the facility as outlined in [REDACTED] email of 2 June 2017.

At best, the ramp only meets standards 10% of the time. In the interest of Public safety, the Public should be prevented from using this facility. As mentioned previously, we only have limited information and therefore do not appreciate the impact this action will have on the local community or the importance of this facility to the local community. In any event Public safety is paramount.

RiskCover's cover conditions requires agencies to take reasonable precautions to mitigate the risk of loss, damage or liability and reasonably comply with all relevant standards. It appears that in this instance the Department of Biodiversity, Conservation and Attractions (DBCA) is unable to meet required standards and is therefore exposed to potential claims. Accordingly these circumstances breach cover conditions.

Unless RiskCover is provided with compelling reasons that changes the views expressed above, we will move to exclude all claims and/or liability arising from the use of this facility.

Insurance is not the solution to the inherent safety issues at this facility.

Regards

[REDACTED]



[REDACTED]
221 St Georges Terrace Perth WA 6000
[REDACTED]
[REDACTED] | riskcover.wa.gov.au

From: [REDACTED]
Sent: Wednesday, 26 July 2017 1:31 PM
To: [REDACTED]
Subject: FW: Canal Rocks : MRA Invoices 17193 & 17199

Hi [REDACTED]

Can you provide comment on the situation below from RiskCover's cover in the event of a mishap.

"Case law shows that if you endorse or continue to allow the use of a structure which does not meet the Australian Standards, then you are liable."

Are we covered in the event that we keep it open and an incident does occur, would we be violating our cover and be without any insurance cover?

Your urgent attention to this is appreciated because of our potential exposure.

[REDACTED]

From: [REDACTED]
Sent: Thursday, 15 June 2017 12:00 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: RE: MRA Invoices 17193 & 17199

Email reference: 646/17, Job number: K1344

Hi [REDACTED]

We have reviewed your email below and have the following response.

The proposed approach by DPaW for the management of the facility would improve the safety for users, but does not address the hazards related to the wave exposure of the ramp. The information provided in your email on the modelling completed by APASA further reinforces our concerns that the wave conditions at the ramp do not comply with the limit in the Australian Standard AS3962-2001 (Wave height < 0.2m) for a very large portion of time. APASA's modelling suggests that during winter the ramp very rarely (<5% of the time) meets the Standard and during summer it only meets the requirements about 5% to 10% of the time.

With or without the jetty the hazards associated with the wave exposure remain. With the jetty in place the risks are people being knocked off the jetty or crushed between vessels and the jetty. If the jetty is removed there is a risk that people can be injured or killed by being crushed between the vessel and the ramp, trailer or vehicle, or knocked over by movement of the vessel by waves. The hazards are slightly different but still result in a high level of risk.

Case law shows that if you endorse or continue to allow the use of a structure which does not meet the Australian Standards, then you are liable.

From our experience, the management of this issue at other ramps has been to remove the ramp and encourage launching and retrieval of vessels at alternative safe ramps which meet the Standard (eg. St Georges Beach Boat Ramp in Geraldton). Alternatively the construction of a breakwater or other wave barrier could address the issues, but we understand that this option is not preferred due to the reasons outlined in your email.

Based on existing case law and the fact that the wave conditions do not meet the Standards, MRA cannot endorse the current or proposed management of the facility outlined in your email below.

Thinking outside the box, one possible solution may be to close the ramp to the general public and have a permit system to use the ramp. Users would need to sign an agreement stating that they understand the risks associated with wave exposure and that they will only use the ramp in safe conditions and at their own risk. A physical barrier would be needed to restrict public access to the ramp. Alternatively a system could be implemented where a gated barrier could only be opened by the user pushing a button that confirms that they understand the risks of using the facility and relieve DPaW of any liability. We are not sure if this is possible, and legal advice would need to be sought to ensure this relieves DPaW of any liability for injury, death, or other damages at the facility.

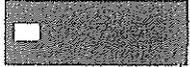
If you have any queries on this please don't hesitate to contact us. .

Kind regards

[REDACTED]
for and on behalf of

m p rogers & associates pl ABN 14 052 511 252
creating better coasts and ports

Suite 1, 128 Macquarie
Oxley Park 6017 Western Australia



www.coastsandports.com.au

boat harbours, wharves, breakwaters, sea walls, jetties, sub-sea structures, dredging, reclamation,
waves, currents, tides, flood/bushfire, water quality, sediment erosion, rivers, boaters, estuaries, coastal hazards

From: [REDACTED]

Sent: Friday, 2 June 2017 11:29 AM

To: [REDACTED]

Cc: [REDACTED]

Subject: RE: RE: MRA Invoices 17193 & 17199

Hi [REDACTED]

Thanks for the chat about finalising this project recently. I've had a chance to think through how to complete the SID report and my notes are below. Would you be able to consider these points and let me know if this is a reasonable approach please? I'm off on leave for a few weeks (back in July) and David Lierich is acting in my role. Would you be able to reply to him in my absence too please?

A. Overall it is good that the SID report is an objective review of the boat launching facility but the facility is probably still going to remain in use for the time being (as is) and ideally a bit of support to back up our approach would be helpful.

I would like the report to explicitly endorse or support Parks and Wildlife's current approach to managing the facility, if possible. Or if there is more we should be doing then please recommend that. Is this within the scope of the MPR's brief?

At the moment (and in light of this report) DPaW is intending to continue the following matters:

1. Monthly inspections of the jetty to check on the condition of the general state of the structure (done by DPaW ranger), which are then documented,
2. Timely preparation of plans to repair and restore damaged chafers and other components when sea conditions allow,
3. Placement of warning signage (and subsequent weekly inspections of the signs) immediately following reports of losses of chafers,
4. Exercise of the statutory powers of formal closure of the jetty in the event that the jetty is seriously damaged,
5. Maintenance of lighting at the launch facility,
6. Periodic high-pressure cleaning of the ramp surface (to remove macroalgal slime) during summer,
7. Inspection and maintenance of the boat ramp surfaces if required (the eastern ramp was re-surfaced in 2015),
8. The installation of remotely operated video cameras to record vessel usage and to quantify the number of incidents occurring at the facility (2017). This information will also identify the wave heights under which accidents occur, which will help develop some criteria by which management of the facility can be based.

B. In a similar theme to point A; Can MPR recommend a "best-practise" approach to the management of the existing jetty and ramp? That is; without considering building a breakwater or other major changes.

I am sure there are similar facilities to this one elsewhere in Australia. What options have been tested in those places and what measures have been tried? The issue being explored would be whether Parks and Wildlife are being responsible managers of the facility as it exists.

C. After this report was produced we spoke about whether removing the jetty entirely would lead to an improvement in safety. Subsequently MPR indicated that this wasn't a recommended option either (see attached email). Can this aspect please be included in the report and expanded / explored in some detail also? I note that many of the anecdotes you've included mention that the jetty is the problem, ahead of the ramps.

My own perspective on this is that in milder conditions the jetty is useful and relatively safe, but in severe conditions then it becomes unusable plus a hazard in its own right. In those mild conditions it is also safe to use the beach area to pick up passengers so the utility of the jetty is fairly small. Does this mild weather "amenity-value" of the jetty really offset the hazards posed by the jetty in rougher conditions? To my thinking we should avoid prioritising someone getting wet over them being pinned against the structure and injured. Can it be explained how we'd quantify the difference in safety between having the jetty and not having the jetty (if possible). Hopefully, this helps clarify why we would choose to leave or remove the structure.

D. Suppose we accept that the jetty will be kept in its general current design for the foreseeable future. Where would DPaW be in implementing minor improvements (e.g. to handrails, fenders or raising the deck – page 13) within the Australian Standard. Are we in a no-win situation given that the jetty won't ever meet the standard? Can this be clarified please? Worth doing these works or not?

E. Item 2.2.2 (page 3) - can MPR cite the estimated percentage of the time that the wave height meets the AS? There is an existing report (extract attached) that did this I think. This might help frame future discussions on the suitability of the site for DPaW.

F. Item 5.0 (page 14). Parks and Wildlife don't consider that the site is suitable for the construction of breakwaters or other swell-mitigating features and this could be mentioned. This is because:

1. There are iconic and unique natural features at the site. Damage to natural values by construction would be at odds to the management objectives of the marine park and the terrestrial reserve gazetted management plans for the location;
2. Encouraging greater use of the facility would exceed its limited visitor capacity. The space available for boat trailer parking is already fully exploited and the construction of new parking bays is thought to be unfeasible due to the presence of fragile karsts and other topographic restraints.
3. A more protected launch facility (also on Parks and Wildlife tenure) is available at Gracetown which is less than 30 minutes away. So there is already a suitable level of coverage provided by Parks and Wildlife for launching vessels in the area.
4. The intertidal area at the location may be subject to a native title claim and any damage to the features at the site would need to be done in consultation with the claimant groups.

OK, thanks again for your patience with this project. It has been a process of learning for us all here!

Cheers,

[Redacted]

[Redacted] :|: Ngari Capes Marine Park :|: Department of Parks and Wildlife WA :|:
:|: 14 Queen Street Busselton, WA 6280

From: [Redacted]
Sent: Thursday, 9 February 2017 11:04 AM
To: [Redacted]
Subject: RE: RE: MRA Invoices 17193 & 17199