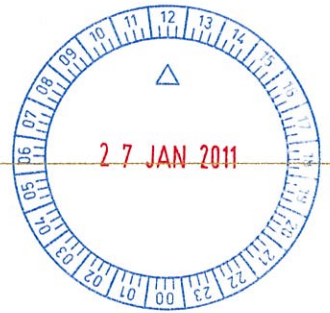


PUBLIC



## Minister for Transport; Housing

Our ref: 30-13862  
Your ref: ev.092.101124.let001.so.DOCA272417

Hon Brian Ellis MLC  
Chairman  
Standing Committee on Environment and Public Affairs  
Parliament House  
PERTH WA 6000

Dear Mr Ellis

### **Petition No 92 - Designated Kite Surfing Area on Mullaloo Beach**

Thank you for your letter dated 24 November 2010 regarding Petition No 92 - Designated Kite Surfing Area on Mullaloo Beach.

It must be noted that there are a number of substantial errors and misconceptions by the Mullaloo Beach Community Group (MBCG) in their preparation of the petition terms.

In response to the terms of the petition, the Department of Transport advises that:

### **Responsibility for Foreshore**

The waters adjacent to Mullaloo Beach, out to the mean 200 metre low water mark, are under the jurisdiction of the City of Joondalup (CoJ) (gazetted 18 May 2001; in accordance with Section 3.6 of the *Local Government Act 1995*). As such, the CoJ can make local laws in relation to navigable waters. A local law will only be invalid to the extent that it is inconsistent to the law of the State. In this case, as it relates to the CoJ beaches, local laws take precedence as there is no current state law governing kite surfing.

### **Definition of 'Vessel'**

The definition of a 'vessel' in the *Western Australian Marine Act 1982* (WAMA) does not extend to sailboards or kite surfers nor does it have a unique definition in that Act. While Section 67 of the WAMA provides that DoT may, by notice published in the government gazette, limit the speed at which vessels may be navigated in any waters specified in the notice, this does not extend to sailboards or kite surfers. Consequently these types of craft are currently excluded from having to comply with any published gazettes, including those imposing restrictions on speed. Kite surfing remains undefined within the *Navigable Waters Regulations 1958*.

## **Petition Reference to North Metropolitan Boating Guide**

DoT acknowledges that certain elements of the safety equipment information and prevention of collision information contained in this pamphlet relative to kite surfing are incorrect. This publication is currently being reviewed and the current version has been removed from DoT's website while corrections are addressed.

## **Petition Reference to International Rules for Prevention of Collision at Sea**

It is a requirement that all navigating craft under the jurisdiction of WAMA abide by these rules but it must be noted that these rules are not mandatory to craft that are not covered by the Act, such as kite surfing.

## **Petition Reference to Speed Limits**

The existing eight knot speed restriction area extending along the north metropolitan coastline from Fremantle to Burns Beach out to 200 metres offshore only applies to motorised vessels. This is consistent with the general intent of WAMA to regulate the activities of motorised pleasure vessels and means that the speed limit does not apply to non-motorised craft such as sailboards and kite surfers.

Similarly, the regulation restricting the speed of vessels to eight knots within 45 metres of a low water mark, a person in the water or within 15 metres of another vessel underway only applies to vessels under the WAMA. This regulation does not apply to sailboards or kite surfers. However, it is incumbent on all users of the area to act with due regard for the safety of others.

At present, for the reasons stated above, kite surfing activities do not breach the *Navigable Waters Regulations 1958*.

## **Legislation Governing Kite Surfing in Other States**

DoT acknowledges that in other states of Australia, kite surfing is regulated within their definition of vessel. Western Australia has difficulties in similarly introducing this form of regulatory control. As stated previously, legal advice provided to DoT from the State Solicitor's Office (SSO) states that kite surfing cannot be included under the current WAMA definition (see extract from legal advice). The SSO advised that Western Australia would need to make regulations pursuant to Section 99(1)(ha) of the WAMA (see extract of legal advice below).

Extract from SSO's advice:

### **"[5] Conclusions**

*It is not possible to rely on regulation 54D to provide directions to the users of kite surfing or sailboarding equipment. The equipment does not fall within the meaning of the word "vessel", as defined by section 3 of the Act.*

*If, however, DPI wishes to control the use of kitesurfing and sailboarding equipment, it would be possible to do so by making regulations pursuant to section 99(1)(ha) of the principal Act."*



## **Western Australian Kite Surfing Association (WAKSA)**

DoT is currently engaged in consultation, as a precursor to regulatory change, with WAKSA to determine if safety regulation of kite surfing is required. This includes discussion on possible safety equipment requirements for kite surfers and mechanisms to reduce potential conflict between kite surfers and other aquatic users by the setting of safe operating distances from swimmers, vessels and other kite surfers. These discussions have the full support of WAKSA. However, it must be noted that DoT's preferred option is for self management of the activity.

## **Mullaloo Beach Community Group**

DoT values the importance of public consultation and the MBCG's concerns are noted via this petition, previous correspondence and DoT's representation at a public meeting earlier this year. The MBCG has been advised previously that CoJ is the lead authority in formulating the CoJ Beach Management Plan, DoT has only been consulted as an interested party.

In the broader statewide review of kite surfing, DoT has invited the MBCG to be involved in a consultative role in the design of new regulations, and also has accepted an opportunity to utilise the MBCG's kite surfing incident register.

I am aware that the increasing popularity of kite surfing, particularly along popular swimming beaches like Mullaloo, is a concern for many beach goers and other water users, and this has provided the impetus for DoT to investigate the merits of regulating the sport.

I hope this information satisfies the Committee's concerns.

Yours sincerely



**TROY BUSWELL MLA  
MINISTER FOR TRANSPORT**

25 JAN 2011

**PUBLIC**