



BACKGROUND REPORT

Proposed changes to the Tasmanian State Coastal Policy 1996 and the proposed Robbins Island wind farm

Summary and Key Asks

PMAT does not have a position on the proposed Robbins Island wind farm.

PMAT, and other Tasmanian conservation organisations, are calling on the State Government to halt plans to retrospectively amend the Tasmanian State Coastal Policy, commit to not interfere with the Robbins Island Supreme Court case and to release its legal arguments regarding the status of existing coastal structures.

PMAT, and other Tasmanian conservation organisations, requests that:

- The State Government immediately stops its attempt to amend the Tasmanian State Coastal Policy, **ensuring there is no impact to the Robbins Island Supreme Court case.**
- Any proposed changes to the Tasmanian State Coastal Policy **must follow the existing, legislated public consultation process.**
- If, as the State Government asserts, the legality of existing structures such as jetties and wharves is in doubt, they have a responsibility to the Tasmanian community to **release the legal arguments** (if not the legal advice) supporting these assertions to ensure transparency in the proposal.

In December 2023, the Circular Head Community Awareness Network Inc commenced a Supreme Court challenge to the Tasmanian Civil and Administrative Tribunal's November 2023 decision to uphold the approval of the proposed Robbins Island wind farm. In March 2024, the Environment Protection Authority (EPA) joined the Robbins Island wind farm Supreme Court case, following advice from the Solicitor General regarding the interpretation of the Tasmanian State Coastal Policy.

On 6 May 2024, the Minister for Renewable Energy and Minister for Parks and Environment Nick Duigan issued a media release announcing that *"The Government will be looking to amend the Tasmanian State Coastal Policy to ensure that we can both protect our coastal environment, and allow sensible and sustainable recreational and other infrastructure that is necessarily connected to our coasts."*



BACKGROUND REPORT

Proposed changes to the Tasmanian State Coastal Policy 1996 and the proposed Robbins Island wind farm

The Environment Protection Authority issued a media statement on 17 May 2024 (in an email to the Tasmanian Conservation Trust) saying that they had received advice that the Environment Protection Authority had erred in law by not ensuring compliance with the Tasmanian State Coastal Policy, and thus they were required to join the Robbins Island Supreme Court case.

The Tasmanian Conservation Trust, Planning Matters Alliance Tasmania and the Australian Coastal Society are concerned the Minister's reference to allowing "*sensible infrastructure*" in fact, means the Government wants to ensure the 500m wharf required to construct the Robbins Island wind farm is not threatened by the ongoing Supreme Court case.

The Minister's reference to supporting "*Tasmania's way of life*" and the claims of validating previous approvals of jetties and wharves around Tasmania have been made without justification and are believed to be a smokescreen for forcing changes to the Tasmanian State Coastal Policy to stop the Supreme Court case and ensure the approval of the controversial wind farm.

Rather than allowing the project to be assessed under the existing Tasmanian State Coastal Policy, the Government wants to intervene, while the Supreme Court case is ongoing, to change the policy to ensure the Robbins Island wharf can be constructed.

Retrospectively changing the Tasmanian State Coastal Policy to accommodate a proponent's development and potentially interfering in a community group's ongoing court action is a serious abuse of the Parliament's powers.



BACKGROUND REPORT

Proposed changes to the Tasmanian State Coastal Policy 1996 and the proposed Robbins Island wind farm

State Policies

- State Policies are made under the [State Policies and Projects Act 1993](#) to articulate the Tasmanian Government's strategic policy direction on matters of State significance related to sustainable development of natural and physical resources, land use planning, land management, environmental management and environment protection.
- A State Policy, amongst other matters, must seek to further the objectives of the Resource Management and Planning System (RMPS) which are set out in [Schedule 1](#) of the [State Policies and Projects Act 1993](#).
- The Tasmanian Liberal Party's 2014 State Election planning policy promised to develop a suite of State Policies to inform the development of the [Tasmanian Planning Scheme](#) – but failed to do so. Instead, the Liberal Government created a new subordinate level of policy called the [Tasmanian Planning Policies](#) (which as of June 2024 are still in draft).
- **PMAT's position is that we should create a suite of State Policies to guide the planning system rather than adopting the subordinate Tasmanian Planning Policies.**

State Policies are a far more superior mechanism to set the intent of our planning system. Critically, they:

- ✓ Bind all state government agencies and provide a whole-of-government approach to land use planning and development (binding the Crown and councils).
- ✓ Ensure a person who contravenes or fails to comply with a provision of a State Policy or a requirement or obligation imposed under a State Policy is guilty of an offence punishable on summary conviction – **which means that it is a criminal offence to fail to comply with a State Policy.**
- ✓ Are self-executing. That is, it can be an offence to not comply with a State Policy, regardless of what a planning scheme says.
- ✓ They provide a whole-of-government strategic approach on various issues and apply across the State.
- ✓ Are created in a more robust and democratic way as they must be approved by both houses of the Tasmanian Parliament.



BACKGROUND REPORT

Proposed changes to the Tasmanian State Coastal Policy 1996 and the proposed Robbins Island wind farm

- ✓ Ensure amendments to State Policies are subject to a robust process and must be approved by both houses of Parliament.
- ✓ Have longevity, as they have survived successive Governments.

Tasmanian Planning Policies are subordinate as they:

- ✗ Only affect Tasmania's land use planning system.
- ✗ Are not self-executing and do not apply to development applications.
- ✗ Are signed off only by the Minister, rather than both houses of Parliament.

Amending State Policies

The standard process of amending a State Policy is outlined in the *State Policies and Projects Act 1993*.

A person may submit a proposed amendment to the Minister. The Minister may then direct the Tasmanian Planning Commission to give advice as to whether the proposed amendment is a significant change to the State Policy.

Minor Amendment to a State Policy

Where, after considering the Tasmanian Planning Commission's advice, the Minister is satisfied that the amendment is not a significant change, then the Minister must publish a notice of the proposed amendment in the Gazette and lay the notice of the amendment and the Tasmanian Planning Commission's advice before both Houses of Parliament.

If not disallowed by Parliament, the amendment comes into effect when published in the Gazette.

A Significant Amendment to a State Policy

If the Minister determines the amendment is a significant change, **then the same process for the creation of State Policies must be followed before the amendment is made.**

An amendment is taken to be a significant change to the State Policy to which it relates if it is a change which substantially alters the content or effect of the State Policy.



BACKGROUND REPORT

Proposed changes to the Tasmanian State Coastal Policy 1996 and the proposed Robbins Island wind farm

Standard State Policy Amendment Process

The standard State Policy amendment process is outlined in the steps below.

1. Minister to prepare draft amendment and provide a notice to the Tasmanian Planning Commission to prepare a report.
2. Tasmanian Planning Commission to place draft amendment on public exhibition for a period of 8 weeks.
3. Representations can be made to the Tasmanian Planning Commission during the public exhibition period.
4. The Tasmanian Planning Commission must consider the representations and may hold a hearing in relation to any representations.
5. Tasmanian Planning Commission may make modifications to a draft amendment (at which point, the modifications may need to be publicly exhibited again).
6. The Tasmanian Planning Commission must then submit a report to the Minister, and the Minister may recommend that the Governor make the draft amendment.
7. The Governor may make the draft amendment and fix the day it shall come into effect.
8. However, before it comes into effect the draft amendment must be notified in the Gazette and laid in both Houses of Parliament within the first 10 sitting days of the Gazette notice.
9. The draft amendment is of no effect until approved by both Houses of Parliament.

Tasmania's State Policies

Tasmania currently only has three State Policies: 1) *State Policy on the Protection of Agricultural land 2009*, 2) *State Coastal Policy 1996* and 3) *State Policy on Water Quality Management 1997*. Further information about each policy can be seen [here](#).

Tasmanian State Coastal Policy 1996

- The [purpose](#) of the *Tasmanian State Coastal Policy 1996* is to 'To protect the natural and cultural values of the coast, provide for sustainable use and development of the coast, and promote shared responsibility for its integrated management and protection.'



BACKGROUND REPORT

Proposed changes to the Tasmanian State Coastal Policy 1996 and the proposed Robbins Island wind farm

- The [developments that are affected](#) are 'Proposed use and development in a coastal area that is 'discretionary 'or 'prohibited' under land use zones applying to coastal areas in planning schemes.'
- The *Tasmanian State Coastal Policy 1996* has been amended twice since it was created:
 - Revised 16 April 2003 in accordance with the *State Coastal Policy Validation Act 2003* (this followed a Supreme Court decision)
 - Revised to take account of a minor amendment (with input from the Resource Planning and Development Commission, which has been replaced with the *Tasmanian Planning Commission*) that was Gazetted on 25 February 2009.

Proposed Changes to Tasmanian State Coastal Policy

- On 6 May 2024, the Tasmanian Government issued a [media release](#) stating its intention, based on 'advice' (note – no mention of legal advice) regarding the application of the Tasmanian State Coastal Policy, to amend the [Tasmanian State Coastal Policy 1996](#).
- The Tasmanian Government justified the proposed changes to the [Tasmanian State Coastal Policy 1996](#) saying it threatens "Tasmania's way of life" and because it "led to the Environmental Protection Authority joining an appeal against Robbins Island windfarm in March 2024 in Tasmania's Supreme Court."
- The public deserve to know exactly what the State Government believes is the problem with the [Tasmanian State Coastal Policy 1996](#), why it threatens "Tasmania's way of life" and why it caused the State Government to intervene in a Supreme Court case seeking to retrospectively change the [Tasmanian State Coastal Policy 1996](#).
- To date, the Tasmanian Government has failed to publicly release the legal advice or to provide a summary of the advice.
- **There is a strong perception that the Tasmanian Government is seeking to retrospectively change Tasmania's [Tasmanian State Coastal Policy 1996](#) to facilitate the construction of infrastructure for the Proposed Robbins Island Wind Farm. That is the construction of a 500 m wharf on Back Banks on Ransonnet Bay, eastern Robbins Island, northwest Tasmania (see photos below, pages 13 and 14).**



BACKGROUND REPORT

Proposed changes to the Tasmanian State Coastal Policy 1996 and the proposed Robbins Island wind farm

- The retrospective amendment to the [Tasmanian State Coastal Policy 1996](#) is likely to be related to clause 1.4.2:

Clause 1.4.2: Development on actively mobile landforms such as frontal dunes will not be permitted except for works consistent with Outcome 1.4.1.

Clause 1.4.1: Areas subject to significant risk from natural coastal processes and hazards such as flooding, storms, erosion, landslip, littoral drift, dune mobility and sea level rise will be identified and managed to minimise the need for engineering or remediation works to protect land, property and human life.
- **Dilution of environmental protection:** If clause 1.4.2 is amended it is likely to result in many unexpected outcomes, such as marina/canal estates, and pave the way for coastal subdivisions and other infrastructure and development throughout Tasmania's coastal areas.
- Any amendment of section 1.4.2 of the Tasmanian State Coastal Policy 1996 is not only a dilution of environmental protection but also **undermines strategic planning in Tasmania.**
- **Maintain the separation of powers between the Parliament and the justice system.** Why not leave the Supreme Court to decide if the permit for the Robbins Island wind farm is valid or not, and if not, identify the problem? **For integrity and transparency in decision making, it is critical to maintain the separation of powers between the Parliament and the justice system. It is inappropriate for the State Government to intervene in the proposed manner.**
- **We are concerned that the State Government may avoid going through the standard public consultation process for amending State Policies** by either amending the *State Policies and Projects Act 1993* or introduce clarifying legislation – or maybe there is some other mechanism? (*PMAT is currently seeking advice on this matter*).
- **The Tasmanian Government is intervening in a Supreme Court Case and at the same time not releasing the legal advice that has led to their course of action.** This is a complex and controversial retrospective change to planning law that the government is proposing, while a Supreme Court proceeding is underway.

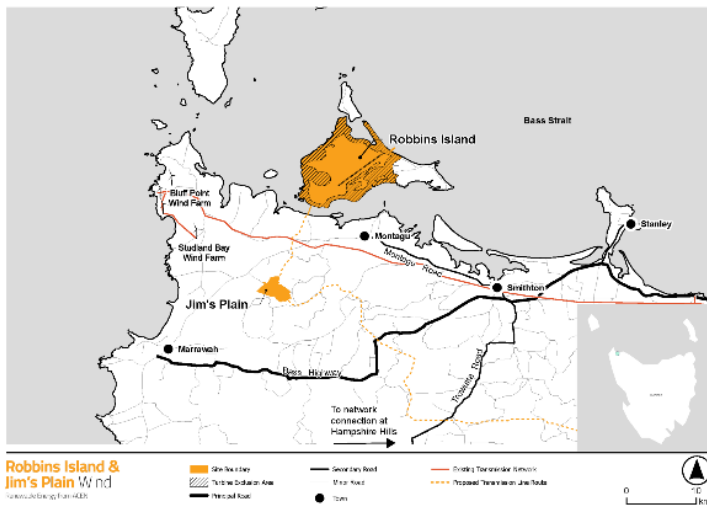


BACKGROUND REPORT

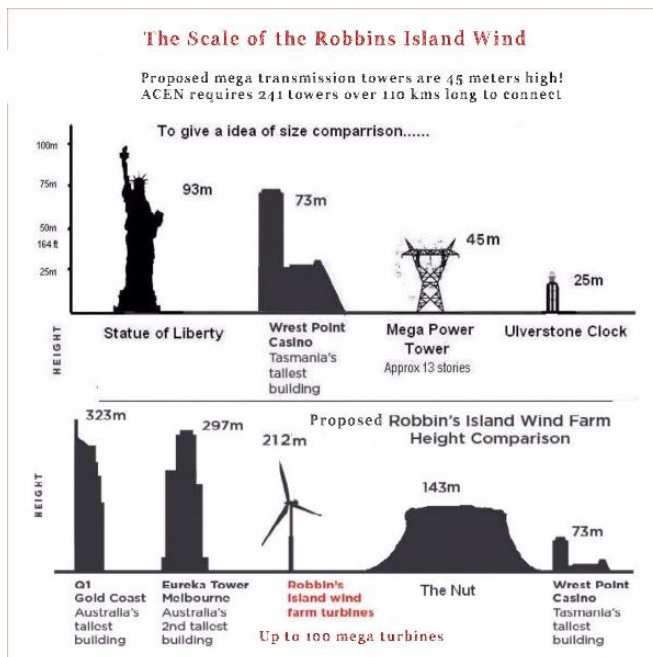
Proposed changes to the Tasmanian State Coastal Policy 1996 and the proposed Robbins Island wind farm

Proposed Robbins Island Wind Farm

The Robbins Island proposed 100-turbine wind farm project is located in the Circular Head Municipality in northwest Tasmania, in the electorate of Braddon.



Source: www.acenrenewables.com.au





BACKGROUND REPORT

Proposed changes to the Tasmanian State Coastal Policy 1996 and the proposed Robbins Island wind farm

The proposed Robbins Island wind farm includes:

- The construction of 100 turbines with maximum tip height of 276m.
- A 500m long wharf to be constructed across the Back Banks mobile frontal dunes on Ransonnet Bay, on the east coast of Robbins Island (the wharf will face into Bass Strait to allow the 85m long turbine blades to be transported onto the island).
- A 1.8 km bridge across Robbins Passage to permanently connect the island to the adjacent mainland.
- The surrounding wetlands support between 20,000 and 30,000 shorebirds and waterbirds, and the wetlands meet 7 of the 9 criteria for nominating the wetlands for protection as Ramsar Wetlands of International Significance. This places the wetlands in the top 10 wetlands in Australia.
- See photos below, pages 13 and 14.



BACKGROUND REPORT

Proposed changes to the Tasmanian State Coastal Policy 1996 and the proposed Robbins Island wind farm

Appeal Timelines

The Tasmanian Civil and Administrative Tribunal Planning Appeal

- **17 February 2023:** The Circular Head Council approved the Robbins Island wind farm.
- **March - September 2023:** The decision was appealed to [Tasmanian Civil and Administrative Tribunal](#) by numerous parties, including ACEN, the Bob Brown Foundation, BirdLife Tasmania, the Circular Head Coastal Awareness Network Inc. (CHCAN), and various individuals.

The Environment Protection Authority was not an appellant but did join as a party to the appeals. ACEN was an appellant against the EPA FF6 condition (which imposed shutdown periods totalling five months when the turbines cannot operate).

- **27 November 2023:** The Tasmanian Civil and Administrative Tribunal refused the appeal and ordered that a permit be issued for the Robbins Island wind farm – see decision [here](#).

Supreme Court Appeal

There are currently two appeals being run in Tasmania's Supreme Court with regards to the proposed Robbins Island wind farm.

- **December 2023:** CHCAN- Circular Head Coastal Awareness Network Inc. initiated a Supreme Court challenge to the Tasmanian Civil and Administrative Tribunal decision. The Environment Protection Authority joined as a party to the appeal.
- **March 2024:** The Environment Protection Authority and State government received legal advice (presumably from the Solicitor General) that the Environment Protection Authority had erred in law in not requiring the Robbins Island wind farm proponent ACEN to assess the proposal against the [Tasmanian State Coastal Policy 1996](#).
- **March 2024:** The Environment Protection Authority commenced a proceeding in the Supreme Court in an effort to appeal the Tasmanian Civil and Administrative Tribunal's decision to approve a wind farm at Robbins Island and correct its error in law in not applying clause 1.4.2 of the [Tasmanian State Coastal Policy 1996](#). CHCAN- Circular Head Coastal Awareness Network Inc. joined as a party to the appeal.



BACKGROUND REPORT

Proposed changes to the Tasmanian State Coastal Policy 1996 and the proposed Robbins Island wind farm

- **4 May 2024:** the Department of Justice on behalf of the Environment Protection Authority advised that the State Government was seeking retrospectivity of amendments to the [Tasmanian State Coastal Policy 1996](#) which might render nugatory the Environment Protection Authority's Supreme Court case. This means the Environment Protection Authority would cease involvement in the Supreme Court case.
- **6 May 2024:** The Environment Protection Authority's Supreme Court case was listed for a Directions Hearing. The Environment Protection Authority requested an adjournment, causing it to be adjourned to 28 June 2024.
- **6 May 2024:** Nick Duigan, Minister for Parks and Environment, issued his first media release: '[Changes to Tasmanian State Coastal Policy proposed](#)' (copy below).
- **17 May 2023:** **The Environment Protection Authority released its only official statement (via an email to the Tasmanian Conservation Trust):** *"The EPA required ACEN Australia to provide information about the application of the State Coastal Policy on the proposed development of the [Robbins Island] wind farm, including the construction of the [500 metre long] wharf [on a mobile frontal dune – see photos below]. ACEN Australia did not provide any information addressing clause 1.4.2 of the Policy. The Board was not aware of its legal obligations in relation to the application of clause 1.4.2 at the time it undertook its assessment and made its decision. The Board received advice in March 2024 that it was required to have regard to clause 1.4.2 and in not doing so it had erred at law, and hence had no option other than to lodge the appeal. As the matter is now before the Supreme Court the EPA will not be commenting further."*
- **27 May 2024:** As of the 27 May 2024, it is our understanding that the Tasmanian Planning Commission has no knowledge of what is proposed in relation to any changes to the [Tasmanian State Coastal Policy 1996](#). The Commission will only become involved if the Minister gives it a written direction under section 15A of the *State Policies and Projects Act 1993*. The Tasmanian Planning Commission will consider any proposed amendment in accordance with the requirements of section 15A.
- **28 June 2024** – the Supreme Court holds its next Directions Hearing in the Environment Protection Authority [appeal](#) – i.e. Environment Protection Authority's concerns regarding the [Tasmanian State Coastal Policy 1996](#). The Environment Protection



BACKGROUND REPORT

Proposed changes to the Tasmanian State Coastal Policy 1996 and the proposed Robbins Island wind farm

Authority could request that this appeal date be postponed. The CHCAN- Circular Head Coastal Awareness Network Inc. appeal is not being held as part of this Directions Hearing as the next stage of their appeal is set down for the 4 November 2024.

- **4 November 2024:** A final Supreme Court hearing has been set down for the related case (brought by CHCAN - Circular Head Coastal Awareness Network Inc.) on 4 November 2024. But if the [Tasmanian State Coastal Policy 1996](#) is amended, then the Environment Protection Authority proceeding may come to an end and not be part of the 4 November hearing.

Media Release: [Changes to Tasmanian State Coastal Policy proposed - Premier of Tasmania](#)

6 May 2024 Nick Duigan, Minister for Parks and Environment

Changes to Tasmanian State Coastal Policy proposed

The Tasmanian Government supports a balanced and sensible approach to developments that benefit Tasmanians, while also protecting our coast lines and their environmental values.

Minister for Parks and Environment, Nick Duigan, said that the Government received advice in March regarding the application of the Tasmanian State Coastal Policy.

“This advice is different to the way that the Policy had been applied to developments in coastal areas since being introduced,” Minister Duigan said.

“This could potentially impact on the use of all coastal infrastructure, including community infrastructure such as jetties and boat ramps.”

This interpretation also led to the Environmental Protection Authority joining an appeal against Robbins Island windfarm in March 2024, which has been approved by the Council, with the decision upheld by the Tasmanian Civil and Administrative Tribunal (TasCAT).

“Our Government wants to ensure Tasmanian communities have the necessary infrastructure to safely enjoy marine recreation, while also providing developers and regulators with confidence in how our State Policies are to be interpreted and applied” Minister Duigan said.

“The Government will be looking to amend the Tasmanian State Coastal Policy to ensure that there we can both protect our coastal environment, and allow sensible and sustainable recreational and other infrastructure that is necessarily connected to our coasts.

“The Government will also ensure that decisions made under previous interpretations of the State Coastal Policy and Tasmania’s planning system are validated to address any unintended liability consequences that may now arise.”



BACKGROUND REPORT

Proposed changes to the Tasmanian State Coastal Policy 1996 and the proposed Robbins Island wind farm

“This Government will always support Tasmania’s way of life and provide confidence in our planning laws for coastal infrastructure.”



BACKGROUND REPORT

Proposed changes to the Tasmanian State Coastal Policy 1996 and the proposed Robbins Island wind farm

Rob Blakers photography of Robbins Island mobile frontal dunes (2023)

The 500m wharf is proposed to be constructed on the eastern coast of Robbins Island, northwest Tasmania.



Back Banks mobile frontal dunes on Ransonnet Bay, northeast Robbins Island, northwest Tasmania. Photo: Rob Blakers.



Back Banks mobile frontal dunes on Ransonnet Bay, eastern Robbins Island, northwest Tasmania. Photo: Rob Blakers.



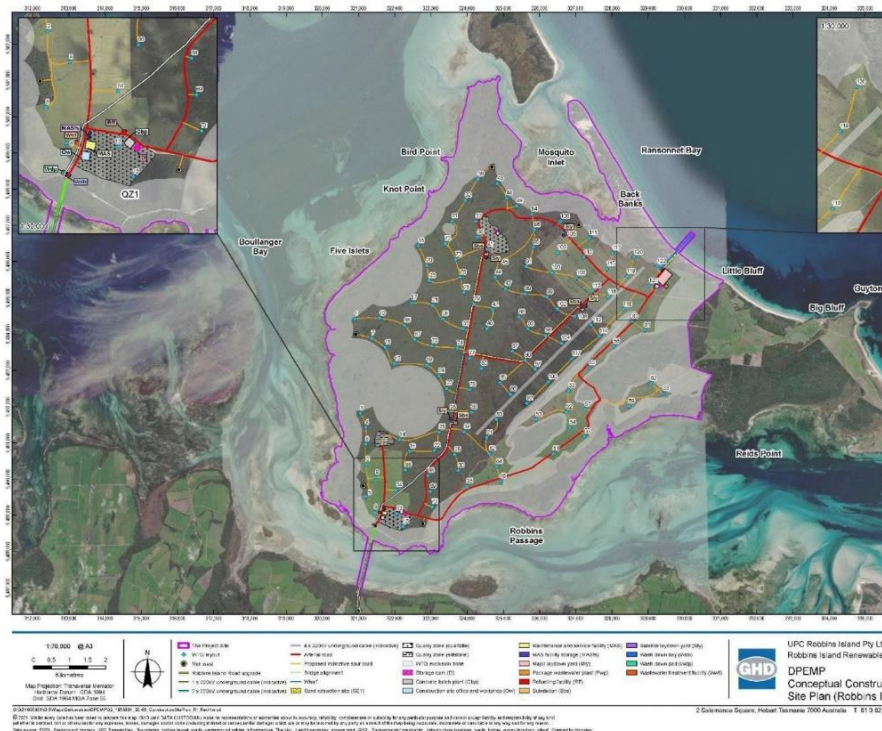
BACKGROUND REPORT

Proposed changes to the Tasmanian State Coastal Policy 1996 and the proposed Robbins Island wind farm



Back Banks mobile frontal dunes on Ransonnet Bay, Robbins Island, northwest Tasmania.

Photo: Rob Blakers.



This indicative map shows the proposed location of 500 m wharf to be constructed on Back Banks on Ransonnet Bay, eastern Robbins Island, northwest Tasmania.