

JOINT REGIONAL PLANNING PANEL HUNTER AND CENTRAL COAST

JRPP No	2012HCC010
DA Number	16-2012-57-1
Local Government Area	Port Stephens
Proposed Development	Extension to Existing Marina (Additional 58 Berths), Depot (change of use) and Car Parking
Street Address	<p>Lot 1 DP 1058490 – 2E Ridgeway Avenue, Soldiers Point. Lot 2 DP 1058490 – 2F Ridgeway Avenue, Soldiers Point. Lot 539 DP 823769 – 2C Ridgeway Avenue, Soldiers Point. Unidentified land subject to lease extension Lot 197 DP 27084 – 2 Sunset Boulevard, Soldiers Point. Lot 0 SP 59025 – Unit 2 & 3 Soldiers Point Road, Salamander Bay. Lot 205 DP 27084 – 2A Soldiers Point Road, Soldiers Point (Spencer Park)</p>
Applicant	Clippers Anchorage Pty Ltd
Owner	<p>Crown Land</p> <ul style="list-style-type: none"> • Lot 1 DP 1058490 – 2E Ridgeway Avenue, Soldiers Point. • Lot 2 DP 1058490 – 2F Ridgeway Avenue, Soldiers Point. • Lot 539 DP 823769 – 2C Ridgeway Avenue, Soldiers Point. • Unidentified land subject to lease extension • Owners consent relating to amended plans has not been provided. <p>Clippers Anchorage Pty Ltd</p> <ul style="list-style-type: none"> • Lot 197 DP 27084 – 2 Sunset Boulevard, Soldiers Point. <p>Port Stephens Council</p> <ul style="list-style-type: none"> • Lot 205 DP 27084 – 2A Soldiers Point Road, Soldiers Point (Spencer Park). • Owners consent has not been provided. <p>Ragusa Pty Ltd</p> <ul style="list-style-type: none"> • Lot 0 SP 59025 – Unit 2 & 3 Soldiers Point Road, Salamander Bay. • Strata Corporation consent has not been provided.
Number of Submissions	<p>Round 1: 641 Round 2: 410 Round 3: 268</p>
Regional Development Criteria (Schedule 4A of the Act)	Clause 8(b) Particular designated development – marinas or other related land and water shoreline facilities, which meets the requirements for designated development under clause 23 of Schedule 3 to the <i>Environmental Planning and Assessment Regulation 2000</i> .

<p>List of All Relevant s79C(1)(a) Matters</p>	<p>Environmental planning instruments: s79C(1)(a)(i)</p> <ul style="list-style-type: none"> • State Environmental Planning Policy No.55 (Remediation of Land) • State Environmental Planning Policy No. 62 (Sustainable Aquaculture) • State Environmental Planning Policy No. 71 (Coastal Protection) • State Environmental Planning Policy (State and Regional Development) 2011. • Port Stephens Local Environmental Plan 2000 (PSLEP2000). • Port Stephens Local Environmental Plan 2013 (PSLEP2013) – savings provision applies. <p>Instrument subject to public consultation and notified to the consent authority: s79C(1)(a)(ii)</p> <ul style="list-style-type: none"> • N/A <p>Development control plan: s79C(1)(a)(iii)</p> <ul style="list-style-type: none"> • Port Stephens Development Control Plan 2007 <p>Planning agreement or draft agreement under section 93F, or: s79C(1)(a)(iv)</p> <ul style="list-style-type: none"> • N/A <p>Coastal zone management plan: s79C(1)(a)(v)</p> <ul style="list-style-type: none"> • Government Coastal Policy <p>Relevant regulations: s79C(1)(a)(iv)</p> <ul style="list-style-type: none"> • Division 5 of Part 9 of the <i>Environmental Planning and Assessment Regulation 2000</i>
<p>List all documents submitted with this report for the panel's consideration</p>	<p>Plans - Marina</p> <ul style="list-style-type: none"> • Proposed berth extension option J, dwg. SK1.31, dated 10/01/13. • Proposed lease extension option F (bow to stern mooring), dwg.SK1.6), dated 20/10/07. • Hydrographic Survey, dated 02/08. <p>Plans - Car parking</p> <ul style="list-style-type: none"> • Valet car parking layout dwg.001 (v.03), prepared by Hamptons Property Services. • No.2 Sunset Boulevard car parking layout, dwg.002 (v.01), prepared by Hamptons Property Services. • Swept paths dwg.TX.01, prepared by Traffix. <p>Internal referrals</p> <ul style="list-style-type: none"> • Building surveyor • Fire safety officer • Development engineer • Traffic engineer • Natural resources officer • Heritage officer <p>External agency advice</p> <ul style="list-style-type: none"> • NSW Department of Primary Industries (Fisheries) • NSW Department of Primary Industries (Great Lakes Marine Park) Marine Park Authority. • NSW Environmental Protection Authority (EPA)

	<ul style="list-style-type: none"> • Roads and Maritime Services • Office of Environment and Heritage • NSW Department of Planning and Environment • NSW Office of Water • Hunter Water Corporation <p>Summary of submissions</p> <p>Zoning maps</p> <ul style="list-style-type: none"> • No. 2 Sunset Boulevard (Zoned 2(a) Residential) • No.2C Ridgeway Avenue and No.2E & 2F Ridgeway Avenue (Zoned 3(a) Business and 7(W) Environmental Waterways Zone respectively) • Unit 2 & 3 324 Soldiers Point Road (Zoned 4(a) Industrial). • No.2A Soldiers Point Road (Zoned 6(a) General Recreation)
Recommendation	<p>THAT the Joint Regional Planning Panel, as the consent authority, refuse development consent to 16-2012-57-1 (2012HCC010) for extension to Soldiers Point Marina, depot and associated car parking for the following reasons:</p> <p>1. Insufficient and Inadequate Information</p> <p>The applicant has provided insufficient and inadequate information to facilitate a thorough assessment of the development.</p> <p>Particulars</p> <p>The applicant has failed to provide the following information:</p> <ul style="list-style-type: none"> • Owners consent (Strata Corporation, Council and Department of Lands); • Species Impact Statement; • Aboriginal Cultural Heritage Assessment; • Hydrological Assessment; • Accessibility Audit; • Hazards Assessment; • Arborist Assessment (Spencer Park Trees); • Economic Impact Assessment ; and • Compliance with principles of ESD. <p>2. Port Stephens Local Environmental Plan</p> <p>The proposed development is inconsistent with the applicable aims and objectives of the following clause(s) and/or zone(s) of Port Stephens Local Environmental Plan 2000:</p> <ul style="list-style-type: none"> • 7(w) 'Environmental Protection 'W' (Waterways Zone)' <p>As such, the proposal is unsatisfactory with regards to section 79c(1)(a)(i) <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>Particulars</p> <p>The proposed development is not satisfactory when tested against the zone objectives. The applicant has not submitted a Species Impact Statement (SIS) and based upon the information</p>

	<p>provided with the development application Council has determined that the development is likely to have a significant adverse impact upon the natural environment.</p> <p>Council also considers that there is potential for the proposal to adversely affect coastal processes as the required hydrological assessment for Council to assess and determine these impacts has not been submitted.</p> <p>3. Port Stephens Development Control Plan</p> <p>The proposed development fails to conform to the controls contained within Port Stephens Development Control Plan (B2 Environmental Management) and is inconsistent with section 79c(1)(a)(iii) <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>Particulars</p> <p>The development does not satisfy the requirements of Chapter B2 Environmental Management.</p> <p>4. Environmental Impact</p> <p>The development has the potential to result in an adverse impact on the environment, and is unsatisfactory when considered against the provisions of section 79c(1)(b) <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>Particulars</p> <p>The development is considered to have the potential to adversely impact the Beach Stone Curlew. The applicant has failed to provide a Species Impact Statement (SIS).</p> <p>Further, the development may result in impacts to significant trees located in Spencer Park.</p> <p>5. Site Suitability</p> <p>The site is unsuitable for the proposed development and is not consistent with the provisions of Section 79c(1)(c) <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>Particulars</p> <p>The overall impacts of the proposed marina extension including ecological impacts, insufficient car parking, visual impacts, and potential impacts to Aboriginal Heritage are considered to be unacceptable. The subject site is therefore considered to be unsuitable for the proposed development.</p> <p>6. Community Consultation</p> <p>The issues of concern raised in public submissions remain unresolved. In this regard, the proposal is not consistent with the provisions of section 79c(1)(d) <i>Environmental Planning and Assessment Act 1979</i>.</p>
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	<p>Particulars</p> <p>The applicant has failed to provide sufficient information, nor sufficiently justify and/or address the proposed developments impact upon:</p> <ul style="list-style-type: none">• Ecology• Visual impact• Car parking• Use of community land• Provision of facilities for persons with a disability. <p>7. Public Interest</p> <p>The proposed development is not in the public interest. In particular the proposal fails to provide a development that is appropriate for the site given existing site constraints and character of locality. As such, the proposal is not consistent with the provisions of section 79C(1)(e) <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>Particulars</p> <p>The proposal results in numerous dis-benefits including:</p> <ul style="list-style-type: none">• The visual impact on the outlook of people using Everitt Park, Soldiers Point Holiday Park, and Sunset Beach is a public detriment,• The proposal does not include the provision of facilities for persons with a disability,• The proposal reduces the area for navigation along with additional berthing in place of existing moorings, which combined results in a public detriment.
Report by	Amy Stone, Senior Development Planner

Assessment Report and Recommendation Cover Sheet

EXECUTIVE SUMMARY

Development consent is sought for a 58 berth extension to the Soldiers Point Marina, at 2C, 2E, 2F Ridgeway Avenue, and unidentified land subject to lease extension, Soldiers Point. The proposal also includes use of a depot for the purpose of valet parking at Unit 2 & 3 Soldiers Point Road, Salamander Bay, formalisation of the sites existing parking at 2 Sunset Boulevard, Soldiers Point, and provision of public parking at 2A Soldiers Point Road, Soldiers Point.

The Soldiers Point Marina is located at the north-western end of the Soldiers Point peninsular between Everitt Park and Sunset Beach. The Marina currently comprises 90 berths. Surrounding land uses include Soldiers Point Holiday Park, and residential development. 2 Sunset Boulevard and Spencer Park are within close proximity to the Marina site. The subject sites have a range of zonings and the proposals are permissible within each of the respective zones under Port Stephens Local Environmental Plan 2000.

Unit 2 & 3 Soldiers Point Road, Salamander Bay, is located within an existing industrial precinct 3.8 kilometres from Soldiers Point Marina. The site is not within proximity to residential properties. Unit 2 & 3 Soldiers Point Road is zoned Industrial (a) 'General Industrial' and depots are permissible in this zone. The proposed use of the existing premises for the purpose of a depot is permissible.

The application was publically exhibited and notified to adjoining landowners and interested parties who previously objected on three (3) occasions. A total of 1391 submissions were received in response to the notification of the development. The key issues raised in the submissions included Aboriginal cultural heritage, amenity, breach in regulations, access for persons with a disability, environmental impact, fire safety, inadequate DA documentation, navigation, impacts to oyster industry, car parking, pollution, traffic impacts, transfer of public waterway to private business, overdevelopment and safety. The issues raised are addressed in the body of this report. It is considered that the issues are sufficient to warrant refusal of the application based upon the information provided to date.

The application is submitted to the Hunter and Central Coast Joint Regional Planning Panel for determination in accordance with 23G and Schedule 4A of the Environmental Planning and Assessment Act 1979, as the development is a type classified under Clause 8(b) Particular designated development, being marinas or other related land and water shoreline facilities, which meet the requirements for designated development under clause 23 of Schedule 3 to the Environmental Planning and Assessment Regulation 2000.

The application has been called before the JRPP at this point largely due to the length of time to which it has been outstanding. Council has been actively working with the applicant and the community over a long period of time in an attempt to facilitate an appropriate outcome on the site. In the interests of transparency, every time the proposal was amended, the proposal was re-exhibited.

To fully gauge community views, Council embarked on an unprecedented community consultation program including one on one information sessions after hours and on weekends at the Tomaree Library.

Council has previously advised the applicant that a number of assessment issues had been resolved, however such issues are dynamic/fluid and not finalised

categorically until a determination issued. It is noted that the extent of outstanding information and resolution of such has changed through the assessment. Accordingly, there are some items that remain outstanding of which arguably the applicant has not been given the full opportunity to address. This is important context as the JRPP considers the most appropriate action/next steps for the application. Although there are a range of robust and significant recommended reasons for refusal, it may be possible for further studies to address such issues via this or a future new DA.

The development has been assessed under Section 79(C) of the Environmental Planning and Assessment Act 1979 and is considered unsatisfactory. Accordingly, it is recommended that the application be refused.

1. LOCALITY PLAN(S)

This aerial map shows a coastal region with several islands and a large peninsula. The islands are labeled with their names and IDs: BUSHY ISLAND (ID: 1161332), DOWARDEE ISLAND (ID: 1161333), and a small island to the right (ID: 1161334). A red circle highlights a specific area on the peninsula, and a white arrow points to the bottom right corner of the map.

1.2. 2 Sunset Boulevard Soldiers Point



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1.4. Unit 2 & 2 No.324 Soldiers Point Road, Salamander Bay



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2. DELEGATIONS

Level of Delegation	Recommendation of Report
The application is to be determined by the Joint Regional Planning Panel (JRPP) as the proposed development is a marina that is designated development.	Refusal: for the reasons specified in section 26.

3. PROPOSAL

The proposed development is for alterations and additions to the Soldiers Point Marina (Refer to figure 1.1). Copies of development plans are included in annexure 1. The proposal involves the following works:

3.1. Marina

- Extension to the wet leased area to the west of the existing berths totaling 8988 square metres.
- Extension of 51 metres to existing A Arm to accommodate 7 x 15 metre berths (southern side), and 9 x 10 metre berths (northern side).
- Extension of 65 metres to B Arm to accommodate 11 x 12 metre berths (southern side), and 6 x 15 metre berths (northern side).
- Extension of 78 metres to C Arm to accommodate 13 x 12 metre berths (southern side).
- Berthing for vessels at the T-heads of each existing arm to be relocated to the end of the extended arms. T-heads will accommodate vessels up to 20 metres.
- The extension results in a total of 148 berths located at the site (additional 58 berths).
- Maintain 50 metre navigation channel from the western edge of the proposed extensions, through to the boundary with the existing oyster leases.
- The marina continues to operate 24 hours a day, 7 days a week in order to enable marina berth holders access to their vessels. An access control gate is located within the existing building associated with the Marina.
- Refer to figure 3.1.1.

3.2. Swing Moorings

- Relinquish seven swing moorings (four from northern basin and three from southern basin).
- Relocation of 14 swing moorings by Roads and Maritime Services (RMS) within both northern and southern location. Relocation at RMS discretion.

3.3. Car parking

- Provision of 33 secured valet car parking spaces at Unit 2 & 3 No.324 Soldiers Point Road, Salamander Bay. Refer figure 3.3.1.
- Formalisation of 20 car parking spaces, two valet car parking spaces and garbage bin enclosure at No.2 Sunset Boulevard. The upgrade to the car park does not result in a net increase from the existing situation. Refer figure 3.3.2.
- Formalisation of 30 on-street parking spaces at 2A Soldiers Point Road (Spencer Park). Net increase of 18 car spaces. Refer figure 3.3.3.

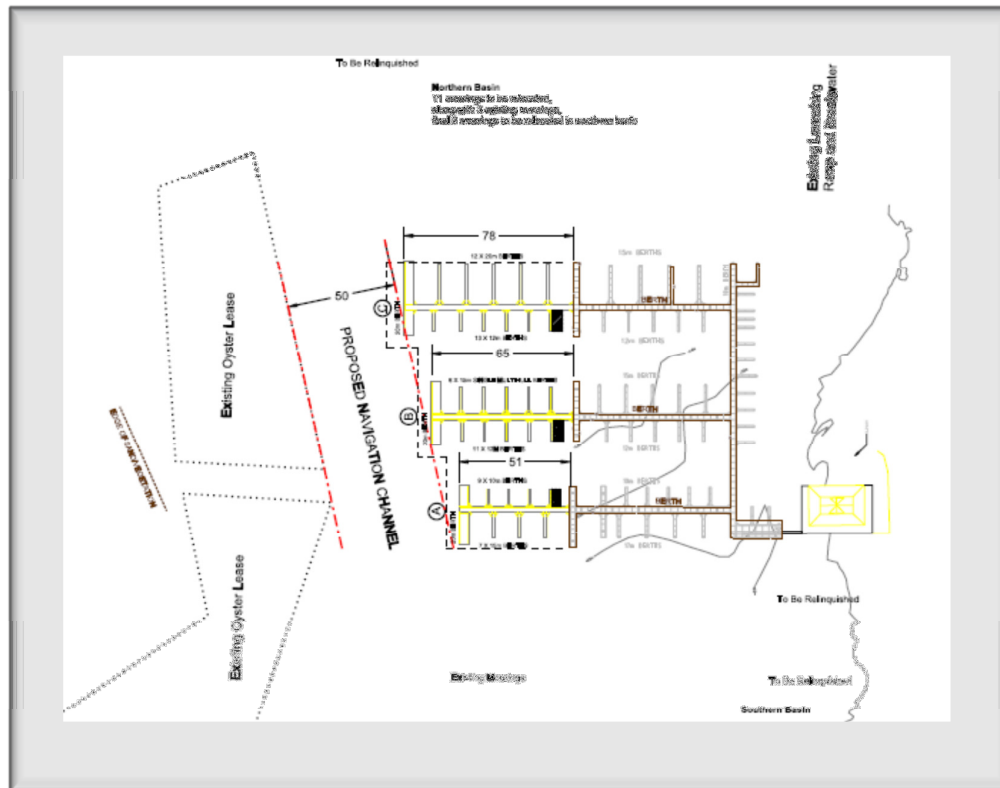


Fig. 3.1.1. – Marina extension

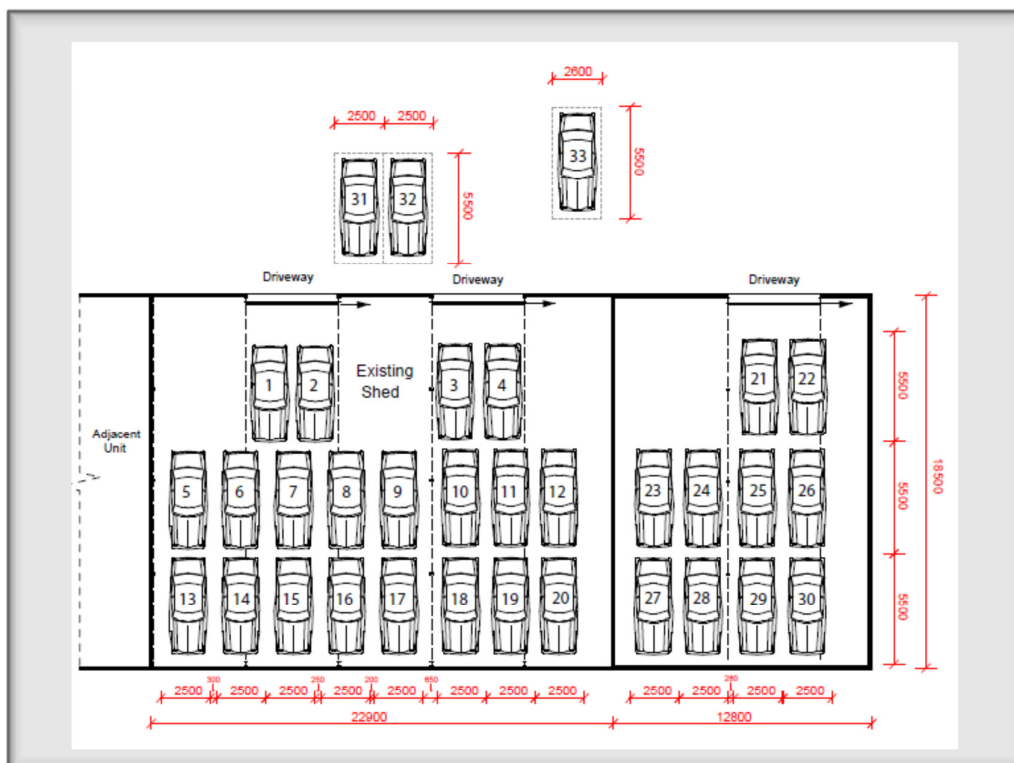


Fig. 3.3.1. – Valet car parking Unit 2 & 3 324 Soldiers Point Road

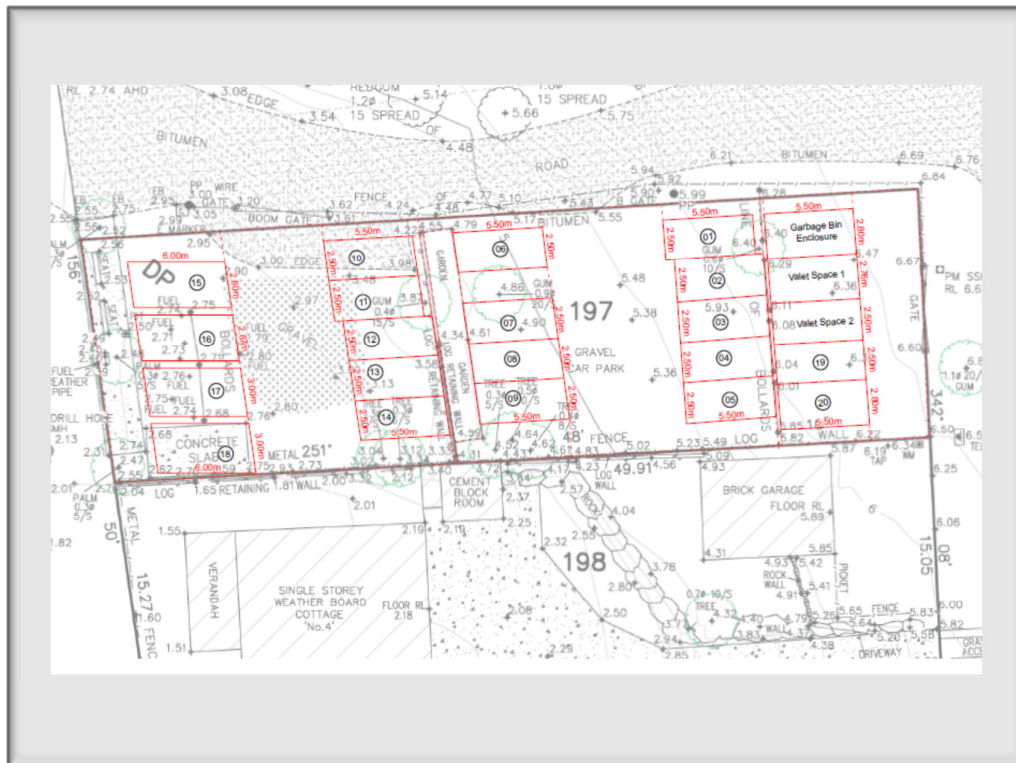


Fig. 3.3.2. – Car parking at 2 Sunset Boulevard

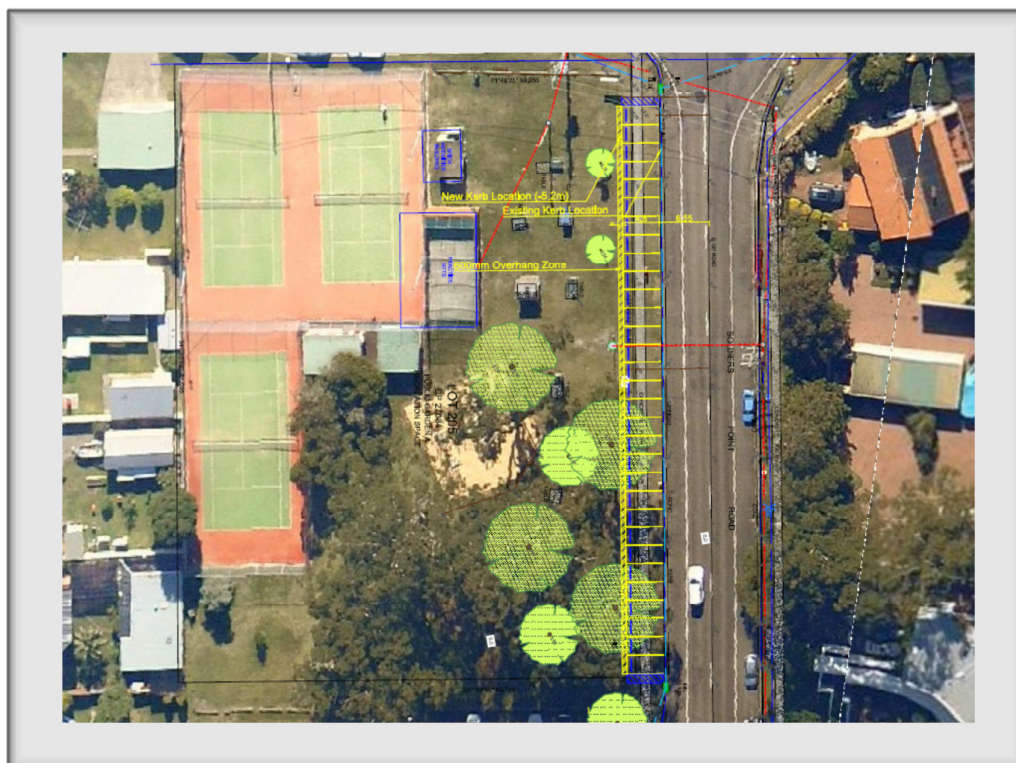


Fig. 3.3.2. – Car parking at 2A Soldiers Point Road

4. Issues summary

Issue	Conclusion	Section
Ecology	The proposal has the potential to significantly impact upon Critically Endangered Species (Beach Stone Curlew). A Species Impact Statement is required.	21.11
Traffic and parking	The applicant is unable to provide adequate parking facilities to service the proposed marina extension.	18.2
View loss and visual impact	The extension is satisfactory with regards to view loss. However, the extension is considered to have an unacceptable visual impact.	21.9
Aboriginal Heritage	The impact of the proposal upon Aboriginal cultural heritage has not been adequately addressed. An Aboriginal Heritage Impact Assessment is required.	21.13.1
Site suitability	The site subject to the proposed marina expansion is not considered to be suitable for the proposed development due to ecological impacts, insufficient car parking, visual impact and potential impact to Aboriginal cultural heritage.	22
Noise	The noise impacts of the proposal are considered satisfactory and could be conditioned to ensure both construction and operational noise impacts are minimised.	21.7
Navigation and Safety	Navigational and safety impacts are generally considered to be acceptable.	21.15

5. SITE AND LOCALITY – Soldiers Point Marina, 2 Sunset Boulevard and 2A Soldiers Point Road, Soldiers Point.

5.1. Physical features

Soldiers Point is located on a peninsular that protrudes from the southern shores of Port Stephens and separates the eastern third of the port from the western. Soldiers Point is a small coastal village with limited services available to the community, and a cluster of shops including a beautician, real estate and general store.

Soldiers Point Marina is located at the north-western end of the peninsular between Everitt Park and Sunset Beach. Dowadee Island is located directly opposite the Marina. An oyster lease is located to the north of the Marina in proximity to Dowadee Island.

The Marina is positioned within the Port Stephens estuary within the Karuah River and Great Lakes Catchment area. The Marina is approximately 7.5 kilometers north-west of the Nelson Bay Town Centre.

5.2. Existing Building and structures

5.2.1. Soldiers Point Marina

The Marina currently comprises 90 berths, a dual slip way, concrete hardstand area and a marina building. Within the marina building are the following uses;

- Administration offices,
- Restaurant,
- Café,
- Two boat sales offices,
- Workshop,

- Laundry,
- Sauna/massage rooms
- Amenities.

The marina site encompasses 16,360m² of land and waterways, and is irregular in shape.

5.2.2.2 Sunset Boulevard

The Marina's associated car park comprises 20 parking spaces and is located at No.2 Sunset Boulevard. A boom gate currently exists to restrict access to the site and spaces are designated to specific marina clients through name plates. The site is regular in shape and 760m² in area.

5.2.3.2A Soldiers Point Road

An on-street public car parking area is located at 2A Soldiers Point Road, on land known as 'Spencer Park'. The park comprises public parallel parking (proposed to be modified to allow rear-to-kerb parking) amenities, barbeque and picnic facilities and play equipment. Spencer Park is adjacent the Soldiers Point Tennis Courts and directly opposite the Soldiers Point Holiday Park.



Img. 5.2.1. – Existing Marina



Img. 5.2.1. – Spencer park – location of car parking

6. SITE AND LOCALITY – Unit 2 & 3 Soldiers Point Road, Salamander Bay.

6.1. Physical features

The off-site valet parking service is proposed at Units 2 & 3 324 Soldiers Point Road, Salamander Bay, which is located approximately 3.8 kilometres from Soldiers Point Marina. The subject site is located within an industrial precinct and is not within proximity to residential properties. The site is access by a battle-axe handle 12.5 metres wide, is irregular in shape and comprises an area of 4670m².

6.2. Existing building and structures

Two industrial buildings comprising separate units and hard stand area currently exist upon the site. Units 2 & 3 currently operate informally for the purpose of a boat valet service and long term boat storage.

7. RELEVANT PROPERTY AND DA HISTORY

7.1. Site history

This section provided details of relevant DA history for the subject sites. Details of approvals relating to car parking have been provided to identify the historic shortfall of car parking associated with the marina facility. The parking shortfall is a relevant consideration to the assessment of traffic and parking at section 18.2.

7.1.1. Soldiers Point Marina

7-1981-625-1: Extensions to Marina (Lodged 3 June 1981)

The EIS lodged with the development application described the proposed development as a marina comprising floating and concrete encased styrene pontoons, secured in position on composite steel and concrete piles. The

marina would comprise a water area of 80 metres x 140 metres, capable in its final development of containing approximately 130 craft.

The application was lodged with Council as an extension to the marina (noting the existing marina had only a small number of swing moorings). The development contained 90 berths and was approved. The planning report noted that the proposal was for up to 130 berths, however only 18 spaces had been proposed. The length of the 130 berth proposal, was a concern at the time given it would render the water between the pontoon and the shoreline virtually un-useable for anything but mooring vessels. It was further recommended that Council restrict the size of the approval until car parking could be provided.

On 15 December 1981 Council considered a special report on car parking for marina developments and agreed to support a conditional approval of the application. The following code was adopted:

"That for Marina Developments Council's car parking requirements be (a) 1 space per every 2 berths or moorings, (b) 1 space per every 2 employees engaged in associated industrial activity and (c) 1 space per every 37 square metres of associated retail sales area'.

Sufficient parking was provided on the basis of Council's Code at the time (0.5 spaces per 1 berth), resulting in 45 car parking spaces required (15 spaces at stage 1 - 30 berths) Condition 1 being 'Stage 1 and 2 of the development comprising 90 berths to be developed concurrently'. (Note: no conditions stated that stage 3 had been deleted from the proposal, however the intent was that stages could not progress until car parking was in accordance with the adopted code for each stage).

7-1986-3411-1: Alterations to Marina

The application sought approval for provision of four car parking spaces and additions to marina and was granted approval. The parking spaces were to be constructed at the front of the main marina building off Ridgeway Avenue (9 Mitchell Street).

The file notes that parking was considered at Council Meeting 24/3/87 in which four spaces are noted at 9 Mitchell street, 28 provided on the marina site, resulting in a 17 space deficiency from the 45 spaces required.

7-1981-625-2: Redesign of Marina Berths

Proposal to re-arrange layout of marina berths and refurbish the in-water marina facilities, including removal of existing piling, flotation devices, walkways, ramps and service, as well as installation of new concrete piling, flotation devices, walkways and services. A construction certificate (CC) was issued on 23 October 2001 taking the total amount of berths to 60 (Plan dated 21 August 2001 and approved by condition 11 demonstrated the 60 berths). The CC also related to the relocation of 40 additional berths which would eventually increase the total number to 90.

The applicant did not require additional car parking beyond the existing requirement for 45 spaces (17 space shortfall still exists on site).

16-2008-942-1: Extension to existing Marina (57 berths) and Valet parking Facility

Instrument of Delegation from Department of Planning dated 13 May 2009. DA withdrawn (Designated Development) as required to be assessed by Department of Planning.

Major Project 2009: Extension to existing Marina and Valet Parking (comprising 57 additional berths and off-site valet parking for 24 cars (at 324 Soldiers Point Rd, Salamander Bay)

On 22 June 2011, NSW Parliament passed a Bill to repeal Part 3A of the Act, therefore the proposal had to be dealt with by Local Council. The applicant was discontinued before EIA requirements issued (letter S Haddad 12 July 2011 received by Council on 15 July 2011).

7.1.2.2 Sunset Boulevard

Council Meeting 25 January 1983 (Marina site and zoning discussed)

The Council Meeting of 25/01/83 identified that the application had acquired Lot 197 Sunset Boulevard which is proposed to be used to provide 20 car parking spaces. It was determined that the site would be adequate to accommodate the car parking required in respect of the first 30 berths and the activities carried on in the boat shed. Lot 197 Sunset Boulevard was rezoned from Residential 2(a) to Special Business (3b). Construction of slipway was to be investigated.

Extract from council meeting notes:

A safe navigational channel of 96 metres wide is to be left between the development and Dowadee Island.

Car parking facilities are to be provided in accordance with Council's Code. The detailed car parking layout is to be prepared in consultation with council's engineering Department and constructed to council's specifications at the Applicant's expense. The car parking proposals are to be the subject of separate application to council.

Council report responding to community inquiry and for provision of update to Councilors. In terms of car parking it was stated that the Applicant had acquired Lot 197 Sunset Boulevard to provide 20 spaces, which was considered adequate for Stage 1 and the activities carried on in the boat shed.

7-1982-1663-1 Car park (Lodged 12 December 1982)

DA for the first stage of DA 625/81 with the construction of 20 car parking spaces BA/DA 1663/82. The breakdown of the spaces was suggested as 15 for the 30 Berths and the remaining five for boatshed activities.

7-1984-2505-1 Car parking (Lodged 2 October 1984)

Proposal to construct 5 car parking spaces to the Sunset Boulevard boundary, 2 Sunset Boulevard (Council approved only 2 spaces). In July 1985 it was found that works on the second stage of 625/81 had started and that a further 10 berths had been added without consent. In October 1985 a further 8 berths were constructed. February 1986 a contribution of \$6975 was paid to Council

equating to 1.5 parking spaces. (Note: this was a one off payment to allow works to widen the car park constructed on 2 Sunset Boulevard to use part of Ridgeway Avenue). The additional land would allow for 4 additional car parking spaces to be constructed. Four additional car parking spaces constructed, 24 provided with 21 deficiency from 45 required.

E872/1994 - Replace and Enlarge Marina Building (Lodged 24 May 1994)

Council approved DA to replace and enlarge marina building including restaurant and additional parking. The consent allowed for storage of up to 3 boats on a concrete slab. The car parking plan refers to 45 spaces and paving to new car parking spaces. Some spaces were contained within the existing parking area at 2 Sunset Boulevard, 2A Ridgeway Avenue, 9 Mitchell Street and some appear to be within the road reserve of Sunset Boulevard and Ridgeway Avenue. Applicant suggested that they had 2 additional car parks. Occupation not to take place until landscaping, car parking spaces constructed and all conditions satisfied (letter from Council dated Oct 1997). Council also wrote to the owner in February 2007 noting that all matters had not yet been finalised. Appears application may have been unresolved in terms of parking, no additional parking spaces were considered to be required.

7.1.3.2A Soldiers Point Road

No Development Applications relevant relate to this site.

7.1.4. Unit 2 & 3 Soldiers Point Road, Salamander Bay

16-1998-61940-1 – Subdivision (5 Lots)

Lodged 24/11/1998 and approved 10/02/1999.

16-1998-1939-1 – Industrial Shed

Lodged 24/11/1998 and approved 11/02/1999.

16-1999-1238-1 – Retail Seafood Outlet

Lodged 6/08/1999 and approved 22/09/1999.

8. INTERNAL REFERRALS

Referral	Summary of comment	Annexure
Building Surveyor	No objections subject to conditions.	2
Fire Safety Officer	No objections subject to conditions.	3
Development Engineer	On-street parking at 2A Soldiers Point Road not supported. Layout does not achieve a minimum 10 metre 'no stopping' area and further information regarding use of community land requested. Valet parking is not supported as legal connection between the site and Marina has not been established.	4
Traffic Engineer	Further information required to enable assessment of parking rate.	5
Natural Resources	Unsatisfactory. Insufficient information provided, Species Impact Statement (SIS) required – Beach Stone Curlew.	6
Heritage Officer	Impact to Aboriginal culture and heritage has not been adequately addressed.	7

9. EXTERNAL AGENCY ADVICE

Agency	Summary of final comment	Annexure
NSW Department of Primary Industries (Fisheries) (Approval Body s.205 of the <i>Fisheries Management Act 1994</i>).	General Terms of Approval provided.	8
NSW Department of Primary Industries (Great Lakes Marine Park) – Marine Park Authority	No objection to the proposal.	9
NSW Environmental Protection Authority (Approval Body, <i>Protection of the Environment Operations Act 1997</i>)	General Terms of Approval provided in relation to revised piling method and amended acoustic impact assessment.	10
Roads and Maritime Services (RMS)	No insurmountable safety issues preventing the development proceeding, subject to conditions including request that all existing commercial moorings be relinquished.	11
Office of the Environment and Heritage	Concurrence is required as the development is likely to significantly affect a threatened species, population, ecological community or its habitat as listed under the <i>Threatened Species Conservation Act 1995</i> (Beach Stone Curlew). OEH DGR not provided as SIS has not been submitted.	12
NSW Department of Planning and Environment	Reviewed EIS and public submissions and found no major issues of state or regional significance. No objection raised to Council finalising the assessment of the application.	13
NSW Office of Water	No objection. The proposed activity occurs on waterfront land but as the works appear to be on Crown Land the works are exempt from a Controlled Activity Approval.	14
Hunter Water Corporation	No response received.	-

10. COMMUNITY CONSULTATION

10.1. Submissions

In accordance with the relevant provisions of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and *Environmental Planning and Assessment Regulations 2000* (EP&A Regs) relating to designated development the application was publically exhibited on three separate occasions following amendments to the application.

10.1.1. Round 1

The first round of notification related to the development as originally proposed and was publically exhibited from 08/03/12 to 05/05/12. The required exhibition period was extended due to extensive public interest. As a result 641 submissions were received. The issues raised in the objections are summarised at section 4.1.1. Refer to annexure 15 for a full summary of these submissions.

Issue	No.
Aboriginal Heritage including: Aboriginal cultural significance, Aboriginal site in middle of Ridgeway Avenue	25
Amenity including: removal of swing moorings, amenity, view loss, reduced access to beach, visual impact	135
Disability Access including: No disabled parking, Facilities	3
Environmental Impact including: Interference with water flow and tidal flow, Beach erosion, Impact whole ecosystem, Impact on sea grass, Pile moorings – affected by tide, sedimentation, habitat loss, Impact on Dowadee Island, Stormwater runoff, Proximity of fuel storage to waterway,	414
Fire Safety: Potential fire safety issues	13
Inadequate DA Documentation	37
Process, lack of strategic context, EIS	
Navigation including: Marine safety, Narrowing channel, Narrowing channel – navigation. Narrowing channel – marine safety	250
Oyster Industry: Impact on oyster industry / shellfish	116
Parking including: Lack of current parking, valet parking unworkable, infrastructure,	364
Pollution including: water pollution – effluent, water pollution, Floating debris, noise and light pollution, smell, waste disposal.	208
Traffic: Traffic congestion, Restricted access.	377
Transfer of public waterway to private business	387
Flora and Fauna: Impact on bird life, Impact on Port Stephens Bottlenose Dolphin, Impact on marine life, Impact on sea grass, Narrowing channel – impact on Port Stephens Bottlenose Dolphin, Beach Stone Curlew	429
Overdevelopment including: Overdevelopment, Scale of the proposed development, Restricting use of marina, Negative impact on tourism, Impact on social environment, reduced access to affordable moorings, Reduced water depth	22
Safety including: Surveillance of boat ramp, Pedestrian safety, Impact on existing mooring and boat damage, traffic congestion, Public safety,	84
Consultation: Lack of consultation – Aboriginal community, Lack of community consultation	5
Non-Compliance with previous conditions of consent	5
Support the proposal	41

10.1.2. Round 2

The second round of notification related to receipt of amended plans and was publically exhibited from 07/03/13 to 15/04/13. As a result 410 submissions were received. The issues raised in the objections are summarised at section 4.1.2. Refer to annexure 15 for a full summary of these submissions.

Issue	No.
Aboriginal heritage including: Archaeology and heritage	3
Amenity including: Public access, visual amenity, loss of views, loss of public land and water, no additional public facilities, reduced berths, commercial bin location unsightly, conflict with PSC boat ramp, insufficient current amenities, geographically unsuitable	109
Breach in regulations: Breach in Local Government Act, breach of Crown lease conditions, due process not followed, non-compliant with existing consent	3
Disability Access: no disabled parking	5
Environmental Impact including: Dowee Island erosion, beach erosion, impaired tidal flows, loss of seagrass and fish habitat, increased potential for fuel spillage and pollution, inconsistent with Precautionary Principle, marine life, habitat degradation, silt deposition and dredging, sediment flows, threat to nesting birds/threatened species/migratory birds	289
Fire safety: increase risk to property and life	4
Inadequate DA Documentation including: inadequate consultation, inadequate EIS, unknown relocation of existing public moorings, water quality, inadequate reporting/monitoring, operational plan of management in line with EPA guidelines	20
Navigation including: Narrowing of channel, increased boat traffic and safety issues, channel access, congestion of boats	130
Oyster industry including: Economic impacts, health/quality production, tidal flows/water pollution/silt deposits	38
Parking including: lack of current parking, existing valet parking does not work, no disability parking, congestion/illegal parking	280
Pollution including: increased potential for fuel spillage and pollution, increased noise and litter/bin odours, water quality/effluent discharge	34
Traffic including: increased boat traffic, traffic congestion, destruction of roadways	73
Transfer of public waterway to private business including: Loss of public land and water, removal of public moorings, privatisation of moorings & channel, disregard of community	81
Overdevelopment including: community not benefitting from development, bulk and scale is excessive for site	12
Safety including: narrowing of navigation channel, safety of neighbouring residences and boat owners	172
Support including: Positive tourism development, upgrading of existing facilities, type of enterprise to be encouraged in Port Stephens, Marina is	79

accredited Level 4-ISO14001 Clean Marina, Environmentally and economically responsible, provide much needed berths during peak season, valet parking, complementary cars and bikes all a positive	
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10.1.3. Round 3

The third round of notification related to the applicants proposal to develop 2A Soldiers Point Road, Soldiers Point for the purpose of public on-street car parking, and was publically exhibited from 30/01/14 to 21/03/14. As a result 268 submissions were received. The issues raised in the objections are summarised at section 4.1.3. Refer to annexure15 for a full summary of these submissions.

Issue	No.
Aboriginal Heritage: Aboriginal site in middle of Ridgeway Avenue, Aboriginal heritage impact,	12
Amenity : Amenity, view loss, visual impact, removal of swing moorings, restricted foreshore access,	99
Disability access: Disability access, parking and toilets, compliance of existing building to disability standards, disability access to Spencer Park.	31
Environmental Impact: Environmental impact, Interference with water flow and tidal flow, Beach erosion, impact on whole ecosystem, inconsistent with precautionary principle, habitat loss, sea level rise.	100
Fire Safety: Potential fire safety issues, explosive materials on-site.	12
Inadequate DA Documentation	23
Navigation: Narrowing channel, navigation	73
Oyster Industry : Impact on oyster industry	52
Parking: Use of Spencer Park for car parking, lack of current parking, potential termination of valet parking, valet parking removed from site, valet parking non-compliance with DCP, valet parking unworkable, use of Spencer Park for car parking inconsistent with Local Government Act	163
Pollution: Pollution, water, noise and light pollution, boats pumping out waste, odour	76
Traffic: Congestion of waterway, widening of road contrary to Local Government Act and Generic Plan of Management, narrow road, congestion , making Sunset Boulevard on way, no defined loading zone, cycle paths, legal access.	93
Transfer of public waterway/land to private business: Conversation of public land to leasehold/freehold, transfer of public waterway to private business, consent from Lands – expired,	33
Flora and Fauna: Removal of trees, impact on koalas, impact on sea grass, beach stone curlew, aquatic creatures, marine life, wildlife, impact on green and loggerhead sea turtles, impact on syngnathid fish, endangered and vulnerable bird species, impact on Port Stephens Bottlenose Dolphin,	56
Overdevelopment: Scale of project, lack of need, overdevelopment,	18
Safety: Use of park for car parking – children /pedestrian safety, footpath inconsistent with Australian Standards, marine safety, footpath inconsistent with DCP, antisocial behaviour, condition of Soldiers Point Road, inadequate street lighting, speed limit	33
Consultation: Lack of consultation with Aboriginal Community, lack of community consultation, notification, lack of consultation with industry bodies,	5
Non-Compliance with previous conditions of consent/approvals	7
Support	4

11. PLANNING FRAMEWORK

11.1. Concurrence

11.1.1. Office of Environment and Heritage

In accordance with Section 5A of the EP&A Act and section 94 of the *Threatened Species Conservation Act 1995* (TSC Act), the development application having the potential to affect threatened species, populations or ecological communities requires concurrence of the Director General (DG) of the Office of the Environment and Heritage (OEH). Concurrence has not been granted as the applicant has not submitted a Species Impact Statement. The Office of Environment and Heritage (OEH) has not provided DG requirements to the applicant.

Should the JRPP seek to grant approval to the development the concurrence of the DG OEH would be required.

11.1.2. Marine Park Authority

In accordance with section 19 of the *Marine Parks Act 1997* concurrence is required from Marine Parks as part of the proposal is located within the Soldiers Point special purpose zone of the Marine Park.

The Marine Parks Authority (MPA) have identified that the proposal is consistent with the objects of the special purpose zone (Marine Parks Regulation 1999), which includes providing for marinas and other maritime facilities. It is also consistent with the Marine Parks Act 1997 and therefore no objections are raised to the application. Subject to the applicant submitting a permit application and approval.

11.2. Designated Development

Section 77A of the *Environmental Planning and Assessment Act 1979* (EP&A Act) provides that development is designated development if it is declared to be designated development under an Environmental Planning Instrument (EPI) or the *Environmental Planning and Assessment Regulations 2000* (EP&A Regs).

Schedule 3 of the EP&A Regs includes certain categories of marinas as being designated development. Alterations and additions are not designated development if, in the opinion of the consent authority, they do not significantly increase the environmental impacts of the total development.

However, the proposed extension is considered designated as it will significantly increase the environmental impacts and is a marine development which results in an intended capacity of 80 or more vessels of any size (per Section 23 (1)(c) Schedule 3 EP&A Regs), and shall also have a ratio of car park spaces to vessels less than 0.5:1 (per Section 23 (1)(b)(iii) Schedule 3 EP&A Regs)

The DA has been submitted on the basis that the development is designated development and it is being processed accordingly.

11.2.1. Designated requirements

The proposed development is designated development as listed under Schedule 3 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regs).

The DA has been notified, publicly exhibited for 30 days (refer to Section 4 for detail) and advertised in the local newspaper. A letter dated 17/11/11 was received from the Director General with a copy of requirements for the preparation of the EIS.

Copies of submissions were sent to the Department, as required by cl.81 of the EP&A Regs. On 05/05/14 a response was received confirming that Council can finalise the assessment of the application.

11.3. Integrated development

The proposed development is integrated as it requires approval under the following Acts:

- *Protection of the Environment Operations Act 1997 (POEO)* as marinas which can accommodate 80 or more vessels are scheduled activities and the work required to construct the marinas would involve scheduled activity work and therefore environmental licenses are required. The approval body under the POEO is the Environmental Protection Authority(EPA).
- *Fisheries Management Act 1994 (FMA)* as a permit is required to harm marine vegetation in a protected area. The Department of Primary Industries (DPI) is the approval body under the FMA.

Submissions were forwarded to the approval bodies, and other Government agencies on 22/05/2014. Round 2 submissions were forwarded to the EPA on 24/07/2012.

The Environmental Protection Authority(EPA) and the Department of Primary Industries (Fisheries) have furnished their general terms of approval (refer Annexures 9 & 10 respectively).

12. THREATENED SPECIES CONSERVATION ACT 1995 (TSC Act)

The *Threatened Species Conservation Act 1995* (TSC Act) provides for the conservation of threatened species, populations and ecological communities of animals and plants. The TSC Act sets out a number of specific objects relating to the conservation of biological diversity and the promotion of ecologically sustainable development.

Section 110 of the TSC Act requires developments likely to affect threatened species, populations or ecological communities that a species impact statement (SIS) must be completed.

Council has identified that the development is likely to adversely impact upon the Beach Stone Curlew. The applicant has failed to provide a Species Impact Statement and the proposal is therefore unsatisfactory in relation to the objects of the TSC Act.

13. PORT STEPHENS – GREAT LAKES MARINE PARKS

Port Stephens–Great Lakes Marine Park extends from Cape Hawke Surf Life Saving Club near Forster south to Birubi Beach Life Saving Club at the northern end of Stockton Beach and includes offshore waters to the 3 nautical mile limit of state waters. It includes Port Stephens and the Karuah River, the Myall River, Myall and Smiths Lakes and all their creeks and tributaries to the tidal limit. The park covers an area of approximately 98 000 hectares.

13.1. Marine Parks Act 1997

The development is subject to the *Marine Parks Act 1997* as the site is located within the Port Stephens – Great Lakes Marine Park. The objects of the *Marine Parks Act 1997* include the conservation of marine biological diversity and maintenance of ecological process, and where consistent with the primary objects to enable opportunities for public enjoyment.

13.2. Marine Parks Regulation 2009

The Marine Parks Regulation 2009 contains mainly consent procedures, procedures for permits, functions of rangers and the Authority, miscellaneous matters and penalty notice offences. There are no provisions applicable to this application.

13.3. Marine Parks (Zoning Plans) Regulation 1999

The site is located within the special purpose zone. The special purpose zone provides for marinas and associated facilities. The proposal is not inconsistent with the zone.

13.4. Conclusion

The Marine Park Authority raises no objection to the proposed development.

14. LOCAL GOVERNMENT ACT 1993

14.1. Clause 30. Reclassification of community land as operational

No.2A Soldiers Point Road, Soldiers Point (Spencer Park) is classified as Community Land. Should the JRPP seek to support the proposal the land affected by the proposal would need to be reclassified to operational. Timeframes involved in this process are lengthy (over 12 months), and would also necessitate Council granting consent.

15. STATE ENVIRONMENTAL PLANNING POLICIES

15.1. State Environmental Planning Policy (Major and Regional Development) 2011

This policy sets out the functions of regional panels in determining applications for regional development. Part 4 of the policy specifically applies to regional development and outlines the functions of Council's and regional panels with respect to the receipt, assessment and determination of development applications. The provisions of the policy have been adopted in the processing of the subject application.

15.2. State Environmental Planning Policy No.55 (Remediation of Land)

Clause 7(1) (b) and (c) of SEPP 55 require that where land is contaminated, Council must be satisfied that the land is suitable in its contaminated state or

will be suitable after remediation for the purpose for which the development is proposed. If the land requires remediation Council must be satisfied that the land will be remediated before the land is used for that purpose.

EPA advice suggests the site has been reported under the *Contaminated Lands Management Act* for contamination on top soil (likely)/ground water (confirmed).

The EPA advised Council that the contamination would be considered and addressed during its assessment by the EPA. The EPA subsequently provided General Terms of Approval. On this basis Council considers that subject to the GTAs issued by the EPA for proposed development are satisfactory.

15.3. State Environmental Planning Policy No.62 (Sustainable Aquaculture)

Given the proximity of the proposed development to existing oyster leases, Part 3A Consideration of effects of proposed development on oyster aquaculture must be considered.

In accordance with Clause 15B, Consultation with Director-General of Primary Industries, before determining a development application a consent authority must consider if the development will have any adverse effects on oyster aquaculture development and if the development will effect will have an effect, notice shall be given to the Director General of the Department of Primary Industries (DPI) Fisheries (Fisheries).

Fisheries have provided GTA's for the proposal. Further Council's Natural Resource Section have assessed the proposal and, subject to limiting vessels of 20 metres to the northern berths, consider that impacts to oyster leases as a result of the proposal are acceptable. The development is satisfactory when considered against SEPP No.62.

15.4. State Environmental Planning Policy No.71 (Coastal Protection)

The subject site is located within the coastal zone, therefore the provisions of State Environmental Planning Polity No. 71 Coastal Protection apply.

The policy seeks to ensure that development in the NSW Coastal Zone is appropriate and suitably located, and its aims include, to: a) protect the natural attributes of the coast, b) protect and preserve Aboriginal cultural heritage, c) protect the visual amenity of the coast, d) protect beach environments and amenity, and e) ensure the type/bulk/scale/ and size of development is appropriate for the location.

The proposed development is inconsistent with the aims of SEPP No.71. The proposal has the potential to significantly, impact Endangered Species and the visual amenity of the Soldiers Point Foreshore. The impacts of the proposal upon Aboriginal Cultural Heritage are unknown as insufficient information has been provided.

Further, the development proposed is considered to be inconsistent with the matters outlined within Clause 8, as outlined below:

Subclause	Comment
(a) the aims of this Policy set out in clause 2,	Development proposed is inconsistent with the aims of the SEPP.
(b) existing public access to and along the coastal foreshore for pedestrians or	Existing public access will be further restricted. No provisions are made for

<i>persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,</i>	access to the foreshore by persons with a disability. Accordingly, foreshore access will be restricted by the proposed development.
<i>(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,</i>	No new public access is proposed.
<i>(d) the suitability of development given its type, location and design and its relationship with the surrounding area,</i>	Development proposed is not suitable and is considered to be an overdevelopment.
<i>(e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,</i>	Development proposed will significantly impact upon the amenity of the foreshore and view lines from public places.
<i>(f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,</i>	The scenic quality of the coast will be impacted as a result of the development. No means are proposed to protect or improve the scenic quality of the coast.
<i>(g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,</i>	Council's Natural Resource section have requested a Species Impact Statement be submitted. To date additional information has not been provided, therefore the potential impact cannot be determined.
<i>(h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats</i>	DPI Fisheries have provided GTAs the proposal is acceptable.
<i>(i) existing wildlife corridors and the impact of development on these corridors,</i>	The development does not impact upon identified wildlife corridors.
<i>(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,</i>	Council's Natural Resources officer has identified that the development proposed may result in the speeding up of coastal processes and associated impacts as a result of increased processes.
<i>(k) measures to reduce the potential for conflict between land-based and water-based coastal activities,</i>	RMS have raised no objection to the proposal.
<i>(l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,</i>	The applicant has not provided sufficient information to demonstrate the proposal will not impact upon Aboriginal Cultural Heritage.
<i>(m) likely impacts of development on the water quality of coastal waterbodies,</i>	EPA have provided GTA's.
<i>(n) the conservation and preservation</i>	The applicant has not provided sufficient

<i>of items of heritage, archaeological or historic significance,</i>	information to demonstrate the proposal will not impact upon Aboriginal Cultural Heritage.
<i>(o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,</i>	N/A
<i>(p) only in cases in which a development application in relation to proposed development is determined: (i) the cumulative impacts of the proposed development on the environment, and (ii) measures to ensure that water and energy usage by the proposed development is efficient.</i>	The cumulative impact of the proposal is not satisfactory as the proposal is likely to have an adverse impact upon critically endangered species (Beach Stone Curlew). Further the cumulative impacts of the proposal with regards to visual impact and uncertainty surrounding the impact to Aboriginal cultural heritage and hydrological processes, are not acceptable.

Development proposed is considered to be inconsistent with the matters outlined within Clause 8 and is not satisfactory with regards to SEPP No.71.

16. PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013 (PSLEP2013)

Port Stephens Local Environmental Plan 2013 (PSLEP2013) commenced 22 February 2014. In accordance with clause 1.8A PSLEP2013 'Savings provisions relating to development applications', any application lodged prior to the commencement of the Plan is to be determined as if the Plan had not commenced. Accordingly, the development shall be considered against the relevant provisions of Port Stephens Local Environmental Plan 2000 (PSLEP2000) as the relevant instrument in force at the time of lodgement. The provisions of the PSLEP2013 as a draft instrument do not affect the outcome of this assessment report.

17. PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2000 (PSLEP2000)

17.1. Clause 4. Land to which the plan applies.

PSLEP2000 applies to all land within the area of Port Stephens cl.3(1) includes land taken to be within the area by virtue of s.205 of the Local Government Act 1993. Section 205(2) includes land and water enclosed by: a) a straight line drawn between the low-water marks of consecutive headlands to any body of water on the foreshores of an area, and b) those foreshores. The PSLEP2000 applies to the development.

17.2. Clause 16 Residential zonings

No. 2 Sunset Boulevard is zoned 2(a) 'Residential 'A' Zone'. Car parking is not a defined use under PSLEP2000 and is not prohibited in the residential zone. The site has historic approval for use as car park associated with the Marina. Refer to Section 18.2 for detail.

17.3. Clause 21 Business zonings

No. 2C Ridgeway Avenue, Soldiers Point is zoned 3(a) 'Business General 'A' zone' refer to Annexure 17 for zone map. The existing berths located on No.2C remains unchanged as a result of the development.

17.4. Clause 23 Industrial zone

Unit 2 & 3 324 Soldiers Point Road, Salamander Bay is zoned 4(a) 'Industrial General 'A' Zone' refer to Annexure 18 for zone map. The use of the premises for the purpose of 'valet parking' is best defined under PSLEP2000 as a 'depot'. The applicant intends to store motor vehicles associated with the Marina use. Depots are a permissible use within the 4(a) Industrial Zone. The proposed use of the subject site is consistent with the zone objectives.

17.5. Clause 29 Recreation zonings

No.2A Soldiers Point Road, Soldiers Point (Spencer Park) is zoned 6(a) 'General Recreation 'A' Zone' refer to Annexure 19 for zone map. The site is also classified as 'Community Land' under the *Local Government Act 1993*.

The on-street car parking proposed by the applicant relates to car parking that is to be utilised by the general public. It is considered that car parking for public purposes is consistent with the zone objective held at 2(c) which permits development associated with, or complementary to open space.

17.6. Clause 32. Environmental protection zonings

No. 2E, and 2F Ridgeway Avenue, Soldiers Point, and the land subject to lease extension, are zoned 7(w) 'Environmental Protection 'W' (Waterways Zone)' refer to annexure 1 for zone map.

The description of the 7(w) 'Environmental Protection 'W' (Waterways Zone)' identifies that development in this zone should generally be of a low impact nature that is sympathetic to, and compatible with, the natural environment.

The objectives of the 7(w) 'Environmental Protection 'W' (Waterways Zone)' seek to minimise the impacts cause by commercial operations on the marine life and ecology of the Port Stephens waterways and to provide for activities and facilities which:

- a) *are compatible with the existing or planned future character of the waterways and adjoining foreshores, and*
- b) *protect and maintain the viability of the oyster, prawn and fishing industries of the Port whilst enabling a balance of compatible recreational uses, and*
- c) *maintain the integrity of the waterways resource base and provide for its continued use by future generations, and*
- d) *ensure there is provision for multiple use of the waterways of Port Stephens having regard to the use and zoning of adjoining waterfront lands, and*
- e) *protect and enhance the aquatic environment and the significant marine habitats of Port Stephens, and*
- f) *protect and enhance the natural environment based on the principles of ecologically sustainable development including biological diversity and ecological integrity, and*
- g) *do not adversely affect and are not adversely affected by coastal processes, in both the short and long term.*

The proposed development is not satisfactory when tested against the zone objectives. The applicant has failed to submit a Species Impact Statement (SIS) and based upon the information provided with the development application Council has determined that the development has the potential to have a significant adverse impact upon the natural environment.

Council also considers that there is potential for the proposal to adversely affect coastal processes, the required hydrological assessment for Council to assess and determine these impacts has not been submitted.

17.6.1. Clause 43 Classification and reclassification of public land

No.2A Soldiers Point Road, Soldiers Point is classified as community land. Clause 43 applies to the site as reclassification of the land to operational would be required to facilitate the proposed car parking solution in this location. Clause 43 provides a mechanism for Council to undertake reclassification of land under the *Local Government Act 1993*.

17.6.2. Clause 51A Development on Acid Sulfate Soils Planning Map

The sites subject to construction works with potential to impact upon Acid Sulfate Soils are limited to the Marina Facility at No. 2C, 2E and 2F Ridgeway Avenue. The land is mapped as Acid Sulfate Soils class 1. The applicant has provided an Acid Sulfate Assessment prepared by Coffey Geotechnics. As the proposed works are below water and unlikely to be exposed to oxygen, the risk has been identified by low. Conditions of consent could be imposed to address the impact of the proposal on Acid Sulfate Soils during construction.

18. PORT STEPHENS DEVELOPMENT CONTROL PLAN 2007

18.1. B2: Environmental Management

Section B2 – Environmental and Construction Management		
B2.2	General Standards	Subject to EPA GTA's the development could be constructed/operated and maintained so as to prevent/mitigate polluting emissions. However, the development does not meet the objectives of the Threatened Species Conservation Act 1995 (impact to Endangered Species) or National Parks and Wildlife Act 1974 (potential impact to Aboriginal Cultural Heritage) and SEPP 71 (Visual impact).
B2.3	Water Quality Management	Subject to conditions of consent and EPA GTA's the proposal is satisfactory with regard to water quality management.
B2.4	Acid Sulphate Soils	Subject to conditions of consent and EPA GTA's the proposal is satisfactory with regard to contamination.
B2.6	Contaminated Land	Subject to conditions of consent and EPA GTA's the proposal is satisfactory with regard to water quality management.
B2.7	Vegetation Management	The development does not involve the removal of any vegetation of significance from the site, nor large scale clearing. Erosion and sediment controls shall be imposed as conditions of consent.

B2.11	Tree Management	The proposed car parking would likely impact upon significant trees located within Spencer Park. Should the proposal be supported further information of the impact to these trees would be required.
B2.12	Waste Water	Subject to conditions of consent and EPA GTA's the proposal is satisfactory with regard to water quality management.
B2.14	Erosion and Sediment Control	Subject to conditions of consent and EPA GTA's the proposal is satisfactory with regard to water quality management.
B2.15	Construction Waste	Subject to conditions of consent and EPA GTA's the proposal is satisfactory with regard to water quality management.

18.2. B3: Parking, Traffic and Transport

Council's Development Engineer has assessed the proposed car parking proposals (No.2 Sunset Boulevard, Soldiers Point, No.2A Soldiers Point Road, Soldiers Point and No. 2&3 324 Soldiers Point Road, Salamander Bay) in relation to B3DCP2007 and the relevant Australian Standards (AS) refer annexure 4. The proposed parking solutions are not supported. Should the JRPP seek to grant approval to the development proposal: a) a legal nexus would need to be created between Unit 2 & 3 Soldiers Point Road and the sites comprising Soldiers point Marina, and b) parking at 2A Soldiers Point Road would require redesign to comply with minimum 10 metre stopping requirements and reclassification to operational land.

19. OTHER REGULATIONS, PLANS AND POLICIES

19.1. Land owners consent

The EPA Regs, cl.49, provides that a DA may be made by the owner of the land or a person with the written consent of the owner.

19.1.1. Soldiers Point Marina

The Department of Lands is the relevant land owner for:

- Lot 1 DP 1058490 – 2E Ridgeway Avenue, Soldiers Point
- Lot 2 DP 1058490 – 2F Ridgeway Avenue, Soldiers Point
- Lot 539 DP 823769 – 2C Ridgeway Avenue, Soldiers Point
- Unidentified land subject to new lease arrangement.

19.1.2. 2 Sunset Boulevard

Clippers Anchorage Pty Ltd is the land owner of Lot 197 27084 – 2 Sunset Boulevard, Soldiers Point. Land owners consent has been provided in relation to this site.

19.1.3. 2A Soldiers Point Road

Port Stephens Council is the land owner of Lot 205 DP 27084 – 2A Soldiers Point Road, Soldiers Point (Spencer Park). Owners consent has not been provided for use of this site, nor has the allotment been introduced to the DA by way of inclusion on the DA form.

19.1.4. Unit 2 & 3 Soldiers Point Road, Salamander Bay

Ragusa Pty Ltd is the land owner of Lot 0 SP 59025 – Unit 2 & 3 Soldiers Point Road, Salamander Bay.

19.2. Government Coastal Policy

The 1997 NSW Coastal Policy sets the context in providing for population growth and economic development at the same time protecting the natural, cultural, spiritual and heritage values of the coastal environment. To achieve this, the Policy has a strong integrating philosophy based on the principles of ecologically sustainable development (ESD).

The applicant has not demonstrated that the proposal will not have a significant impact upon local ecology and Endangered Species (Beach Stone Curlew). Further there has been insufficient assessment as to the proposals impact to Aboriginal Cultural Heritage. The proposal is inconsistent with the NSW Government Coastal Policy.

19.3. AS3962-2001 Guidelines for design of marinas (AS3962)

AS3962 contains guidelines for marina designers, manufacturers and operators in relation to recreational marinas and small commercial vessels up to 50m in length. The standard covers investigations, dimensional criteria, loading & stability, design considerations, services, onshore boat facilities and traffic & parking.

19.3.1. Section 2 – Investigations

A further hydrological report with flushing rates, flood lag times and modelling is required. Sand movement in the Port is highly complex and the level of modelling completed is inadequate. Lack of detail in ecology reports, flora, corridors, visual impact, oyster leases, hydrology, noise and foreshore stability.

19.3.2. Section 3 – Dimensional Criteria

A minimum 40m channel between the boundary of the oyster lease and the footprint of the Marina is required (RMS, June 2013). The applicant provided amended plans to ensure compliance with RMS requirements.

19.3.3. Section 4 – Loading and Stability & Section 5 – Design Considerations

The proposal including the piling method has been assessed by the EPA and considered satisfactory (EPA, November 2013).

19.3.4. Section 6 – Services

There are no proposed changes the existing publically accessible facilities and services at the marina as part of the subject development application.

19.3.5. Section 7 – Onshore Boat Facilities

There are no proposed changes to the existing facilities at the marina as part of the subject development application.

19.3.6. Section 8 – Traffic and parking

The car parking rates of 0.3 spaces per commercial berth/mooring has been applied to the subject development refer to section 18.2 for car parking assessment.

19.4. Lower Hunter Regional Strategy

The primary purpose of the Lower Hunter Regional Strategy is to ensure that adequate land is available and appropriately located to sustainably accommodate the projected housing and employment needs of the Region's population over the next 25 years.

The proposal is generally consistent with the outcomes and actions of the strategy.

19.5. Hunter and Central Coast Regional Environmental Management Strategy

The Hunter and Central Coast Regional Environmental Management Strategy (HCCREMS) is a framework developed to guide Hunter and Central Coast Regional Council in addressing environmental issues at a regional scale.

The HCCREMS framework provides flora and fauna survey guidelines volumes 1 & 2. The applicant has provided insufficient information. Based upon the information available to Council to date the proposed development is considered likely to have an adverse impact to the environment and local endangered fauna. The proposal is not consistent with HCCREMS.

19.6. Port Stephens Planning Strategy 2011-2036

The PSPS responds to the State Government's Lower Hunter Regional Strategy and Lower Hunter Regional Conservation Plan by providing local level detail, and by incorporating the results of more recent studies, such as the Port Stephens Commercial and Industrial Land Study and the Rural Lands Study.

The Port Stephens Planning Strategy (PSPS) was adopted by Council on the 20 December 2011. The primary purpose of the PSPS is to guide land use planning and decision making for development and environmental outcomes. The PSPS provides the framework for the broad strategic base to manage growth and is supplemented by the development of sub-strategies to provide an additional level of detail for specific areas or issues.

Soldiers Point

There is around 1,742 m² of commercial/retail floor space which is forecast to increase by around 500 m² between 2009 and 2031. There is sufficient capacity to accommodate this additional floor space demand.

Facilities Expected	Facilities Available	Challenges/ Opportunities
A strip or cluster of shops in a mostly residential area with a smaller range of products or services and a smaller catchment than a village centre.	Cluster of shops, including a beautician, real estate and general store. Limited GP medical services. Rural Fire Station nearby. Soldiers Point Community Hall.	Centre provides the day to day needs of residents. A number of vacant shops. Some intensification of the neighbourhood is occurring.

Soldiers Point is predominantly a coastal village area. Opportunities exist for increasing densities to maximise access to existing infrastructure however, it is

likely to yield only a small amount of new dwellings. No large scale new release area available, only potential is for limited small scale infill.

The Port Stephens Planning Strategy does not identify the need for any further or significant development within the Soldiers Point locality. There are concerns relating to the infrastructure provisions (car parking) within the area and the ability of the local to support the growth associated with the proposed development. The scale of the Marina expansion is not considered appropriate for the local context.

19.7. Port Stephens /Myall Lakes Estuary Management Plan

The Estuary Management Plan is applicable to the subject site being located within the waterways of Port Stephens. The Estuary Management Plan provides a range of co-ordinated actions to deal with catchment related drivers of estuary health, rather than only addressing the resulting issues in the estuary.

The applicant has demonstrated that the proposed development can be managed during construction and operation to mitigate potential detrimental impacts to the health of associated waterways. GTA's have been provided by the EPA.

19.8. Port Stephens Foreshore Management Plan

The Estuary Management Plan identified the 'naturalness' of the foreshore of the estuary as one of its greatest assets. The Foreshore Management Plan provides a guide for the long term management of the Port Stephens Estuary Foreshore in order to protect its environmental, recreational, economic and cultural values.

The Plan provides a comprehensive review of the assets, conditions and values of the Port Stephens Foreshore. It identifies that: a) the character of the Foreshore is one of the most significant residential and tourist attractors to the area, b) the Foreshore supports areas of ecological significance, c) visual amenity is best protected through concentrating urban development within existing areas and minimising development on ridgelines and the immediate foreshore, and there are many places (including the entire Foreshore) which are of significance to the Aboriginal community, but which do not have evidence of physical occupation.

The applicant has provided insufficient information to provide Council with certainty that the development will not result detrimental impacts to the: a) character of the foreshore, b) ecology, c) visual amenity, and d) places of Aboriginal cultural heritage. The development is not consistent with the Port Stephens Foreshore Management Plan.

19.9. Urban Stormwater and Rural Water Quality Management Plan

Soldiers Point is comprised of predominantly urban development, which drains directly to Port Stephens on both sides of the point. Soldiers Point is predominantly zoned for residential purposes with some areas of recreation land around the waterfront areas of the Point. Significant sea grass beds are located within the Soldiers Point coastal region.

In general, water quality in the Soldiers Point area is of an acceptable standard however nutrients and faecal coliform levels are of concern from some drainage networks following rainfall. Potential exists for improving stormwater

quality, through the implementation of management strategies, in particular those related to non-structural source control. Water quality data has also been obtained from the Hunter Water Corporation for Soldier Point. While this does not provide data on stormwater quality it does provide information on the quality of receiving waters.

There are no proposed changes to the existing marina building and its surrounds, stormwater management will continue in accordance with the existing situation. Stormwater quality will therefore remain consistent with the current situation, which is considered to be adequate.

20. Port Stephens Section 94A Development Contribution Plan

The application attracts Section 94a Contribution *pursuant to section 80A(1) of the Environmental Planning and Assessment Act 1979* and the Port Stephens Section 94A Development Contributions Plan. A contribution of 1% of the cost of development would be payable to as determined in accordance with clause 25(j) of the Environmental Planning and Assessment Regulation 2000.

21. ASSESSMENT OF DEVELOPMENT IMPACTS

Section 79C(1)(b) requires the likely impacts of the development (including environmental impacts on both the natural and built environments) and social and economic impacts in the locality to be taken into consideration. The following is an assessment of the impacts of the current proposal.

21.1. Demand

The Director- General requirements (DGRs) issued for the proposal on 17/11/11 specify that the applicant should include an assessment of the demand for marina berths in the local and regional area (including boat type, length and height). The assessment was also required to address impacts of the proposal upon existing boat storage in the area (including the displacement of existing swing moorings), and any potential cumulative impacts that may arise from the proposal.

The applicant has not provided sufficient information to demonstrate there is a demand for the extension to the existing marina facility. Furthermore the applicant has not demonstrated the existing marina site is the most appropriate location for this scale of marina facility. Details of the site selection process undertaken by the applicant in selecting the site for expansion have not been provided. Council is not satisfied that the existing marina facility is an appropriate location for a facility of the scale proposed.

21.2. Land surface

The DGRs specify that the applicant should address soil impacts including: disturbance of contaminated sediments during construction and operation, acid sulfate soils, and management measures for the containment of pollutants (e.g. fuel and storage).

The applicant suggests that as the proposed works are limited to the water-based component of the marina, measures will be limited to those required to prevent adverse impacts during the construction stage. In this regard the proposed construction method does not require excavation or significant disturbance of the sea bed.

The Environmental Protection Authority (EPA) has provided GTA's in relation to the piling method proposed by the applicant and have recommended conditions to ensure that the construction methods and piling methodology does not adversely upon acid sulfate soils.

21.3. Hydrological matters

The Guidelines for preparation of an EIS for Marina's stipulates that consideration of hydrological issues should include assessment of existing drainage patterns, wave climate, tidal patterns, and changes in water movements.

Council's Natural Resource Section have reviewed the hydrological assessment and determined that a further hydrological assessment is required detailing flushing rates, flood lag times and modeling. The applicant did not provide a amended hydrological study. Therefore, proposal is unsatisfactory in relation to hydrological issues.

21.4. Water quality & waste management

The applicant suggests that appropriate mitigation measures will be employed during construction and during on-going maintenance to ensure that water quality objectives for the catchment area (Karuah River and Great Lakes Catchment) are maintained. Further, measures will be employed during construction to mitigate sediment control and potential disturbance of contaminated sediments.

With regards to waste management the applicant proposes that a construction waste management plan would be prepared prior to issue of Construction Certificate. Operational waste management will be maintained in accordance with current management practices and includes provision of sewage pump out systems to each berth and provisions of daily garbage collections.

The EPA have provided GTAs with regard to water quality during construction. Conditions of consent can also be imposed regarding waste management.

21.5. Sea Level Rise and flooding

The DGRs identify that the applicant was to address flooding, coastal and riverine processes and sea level rise. The applicant has identified that the proposed extension consists of a floating concrete structure, and the potential implications of sea level rise on these works are limited. Council accepts the applicant's assessment of the proposal in relation to this matter.

21.6. Air quality

The applicant has stated that as the proposed water-based works are limited to an extension of the existing marina, therefore air quality impacts are limited to those which would occur during construction or from the off-site valet service. The applicant has provided a certificate dated 29/05/08 which specifies Soldiers Point Marina is a low carbon marina.

Council is satisfied that the air quality impacts of the proposal are acceptable subject to conditions of consent.

21.7. Noise

The DGRs specified that the applicant address noise and vibration including impacts from the construction and operation of the marina, impacts from traffic noise and an assessment of these impacts with regard to nearby noise receivers.

The applicant proposes the primary parking solution to be located off site (at 2 & 3 324 Soldier Point Road) which is located within an industrial precinct, and as such the noise impacts of traffic to residential receivers within proximity to the Marina are mitigated.

The pile driving technique proposed by the applicant has been assessed by the EPA and required the provision of a detailed Acoustic Report prepared by Acoustic Directions. The EPA granted GTAs in relation to noise during construction. Council is satisfied that the imposition of EPA GTAs and standard conditions of consent would ensure that the proposal is satisfactory in relation to noise impacts.

21.8. Energy and water efficiency

The applicant notes the Soldiers Point Marina is a carbon neutral marina under the Marina Industries Association of Australia's Low Carbon Marina Initiative. However, the applicant has not provided sufficient detail upon energy and water efficiency noting that there is limited opportunity to implement energy and water efficiency measures across the entire Marina facility.

21.9. Visual Impact

The DGRs require that the applicant address the visual impact of the proposal (including height, scale, density and lighting) on the local and regional area, particularly from: a) any adjoining properties along the foreshore areas of Port Stephens, b) water users of Port Stephens, and c) significant vantage points in the public domain such as roads, parks of the foreshore.

The visual impact assessment provided by the applicant is inadequate. The applicant did not provide photographs of viewpoints or photomontages; in this regard the applicant did not provide sufficient photographic analysis of the site. The submitted report justifies the extension footprint in view that additional vessels will add to the existing visual catchment which is part defined by the existing marina component contributing to the visual catchment.

An inspection of the site was carried out during which the site was viewed having regard to potential visual impacts of the associated proposed development. The following approach was adopted with the aim to systematically evaluate the visual environment pertaining to the subject site and using value judgements based on human responses to scenery:

- Objective assessment of the relative aesthetic value of the landscape, defined as visual quality and expressed as high, medium or low. This assessment generally relates to variety, uniqueness, prominence and naturalness of the landform, vegetation and water forms within each landscape character type.
- Determination of the landscapes ability to absorb different types of development on the basis of physical and environmental character.
- An assessment of viewer sensitivity to change. This includes how different groups of individuals view the landscape.
- The undertaking of a viewpoint analysis to identify areas likely to be affected by development of the site and a photographic survey using a digital camera and a handheld GPS unit to record position and altitude.
- An assessment of the potential visual impacts on the landscape setting and character.

The current landscape setting is one that conforms to a combination of intrinsic natural landscape elements. These elements converge to form a visual catchment of a coastal foreshore setting, including the existing marina and views to surrounding water, and vegetated landforms including islands and foreshore spurs. While it is acknowledged that the marina forms part of the existing visual catchment and context of the area, it is identified that the proposed development is of a scale that reduces the visual amenity particularly from public areas along the foreshore edge. The Marina extension results in a

detrimental visual impact to the existing visual catchment due to the loss and/or reduction of the other visual components that make up the visual amenity of the setting.

Viewpoint 1 demonstrates that should the Marina extend and project past the existing jetty alignment that vista views from that viewing perspective would be reduced. This is also reflective in viewpoint 2. Viewpoint 2 illustrates that the Marina extension would limit views across the bay to the Dowardee Island reducing the visual connection from the foreshore edge to the vegetated island. The Marina extension therefore poses visual impacts and reduces the visual connections and vistas to land formations surrounding the foreshore edge.

The proposed expansion of the Marina will create an extension of the visual bulk and form. This would result in views being lost and or reduced to vegetated landforms and water views to the backdrop as viewed in both perspectives. These landforms as viewed from the perspective locations contribute to the visual catchment that defines the visual context.

As identified above, vessels and the marina form part of the existing visual catchment however other natural elements also form the visual context. It is concluded that while the marina forms part of the visual cues associated to the general foreshore visual catchment the proposal reduces the visual impacts on other existing elements that form the visual context and will have an unacceptable visual impact upon the locality.



Img.21.8.1 Viewpoint 1



Img.21.8.2 Viewpoint 2

21.9.1. Summary tables – visual impact

Table 15.9.1 – Viewpoint 1

VIEWPOINT 1		LANDSCAPE DESCRIPTION	POTENTIAL VISUAL IMPACT
Location	Jetty adjacent Pearson Park	View from existing jetty located to the south of the proposed development. The viewing distance is approximately 365.0m to the existing mooring station. The foreshore edge and low residential form is located to the east, natural vegetated reserve to the north west. The marina is located to the north with existing vista views past the mooring area to the north west with distant views to the natural vegetated landforms to the northern visual backdrop.	From this perspective the proposed expansion of the mooring station reaching double in size to the western aspect will reduce views past the marina and moorings whereby views would be lost or significantly reduced. This also proposed a narrow channel to the western interface with the island reserve and views from this locations would be significantly altered.
Coordinates	S32° 42' 18.12", E152° 3' 47.21"		
Elevation	Camera Height 1.70m from Jetty RL		
LCU	N/A		
Viewing Distance	350m		
Land Use	7W	NOTES: The images that the photo simulations have been based on have been captured with a Canon 600D SLR digital camera with a 35mm fixed focal lens which closely represents the central field of vision of the human eye.	
Potential Visual Impact	High		

Table 15.9.2 – Viewpoint 2

VIEWPOINT 2		LANDSCAPE DESCRIPTION	POTENTIAL VISUAL IMPACT
Location	Everitt Park (Port Stephens Boat Ramp)	View from northern car park and boat/vessel jetty pad at the north western tip of Soldiers Point. Viewing distance to the proposed mooring footprint is approximately 200.0m. The existing visual catchment ascertains views to the reserve and natural foreshore edge.	From this viewpoint the proposal would visible and thus create loss of views to the natural edge of the islands reserve foreshore. The increase in footprint and visual built form created by vessels and moorings will reduce the visual connections as perceived by the current visual catchment.
Coordinates	S32° 41' 58.04", E152° 3' 44.00"		
Elevation	Camera Height 1.70m from Jetty RL		
LCU	N/A		
Viewing Distance	130m		
Land Use	7W	NOTES: The images that the photo simulations have been based on have been captured with a Canon 600D SLR digital camera with a 35mm fixed focal lens which closely represents the central field of vision of the human eye.	
Potential Visual Impact	High		

21.10. Flora

The applicant suggests that the proposed extent of works associated with the proposal is minor and will not result in adverse impact upon sea grass communities. The Ecological Impact Assessment prepared by WS Rooney and Associates, concludes that the proposal will not result in any structure or berthing activity near Dowardee Island, and shall not impact upon sea grass that grows within the shallow water adjacent the island.

Council does not consider the scale of the proposed development to be minor. Notwithstanding, Council's Natural Resource Section have assessed the proposed development and assessed seagrass has been assessed to not be at risk.

21.11. Fauna

The EIS does not address Ecology. The applicant provided an Addendum which included an Ecological Impact Assessment prepared by WS Rooney and Associates that identified the proposed development was acceptable in relation to impacts to local fauna.

Council's Natural Resource Section has identified that the changes in hydrology from the proposal may affect sand movement which may alter the foraging areas of the 'critically endangered' Beach Stone Curlew. Given the low population numbers and the listing of the species as 'critically endangered' the potential impact to this species is considered likely to be significant. Council required that a Species Impact Statement (SIS) be provided. The applicant has not provided an SIS and the application should not be supported, given an SIS was not provided. Concurrence from the Office of Environment and Heritage has not been received.

21.12. Disability Access

The applicant has not addressed compliance with disability access requirements. The proposal does not provide additional facilities for persons with a disability or parking spaces dedicated for disabled access. Given the scale of the proposed extension it is warranted to give consideration to the potential to upgrade existing facilities in order to achieve compliance with disability access requirements. An access audit was not provided and Council has insufficient information to assess the proposals compliance with disability access requirements.

21.13. Heritage Impacts

21.13.1. Aboriginal Heritage

This site is located at Soldiers Point, NSW. The Soldiers Point area of Port Stephens is revered by the local Worimi Aboriginal Land Council as being an outstanding place of culture and heritage and a place of longstanding Worimi occupation.

The Environmental Impact Statement does not adequately address the impact on Aboriginal Cultural Heritage. An Aboriginal Heritage Impact Assessment is required to assess any archaeological and to provide opportunities and options to ensure cultural heritage and materials present are protected.

21.14. Land transport and parking

21.14.1. Requirements

The EIS includes a Land Transport, Traffic, Parking & Servicing Impact Assessment prepared by McLaren Traffic Engineer, dated 01/02/12. The applicant has accepted a parking demand rate of 0.3 spaces per wet berth as per the AS3962-2001 Guidelines for design of marinas. Car parking rates applicable are as follows:

- $58 \text{ moorings} \times 0.3 = 17.4 \text{ spaces}$

Council has undertaken a historic record search and has identified a historic shortfall of 17 spaces exists in relation to the Marina. The applicant has acknowledged that the historic total car parking shortfall should be addressed in the current application. The applicable car parking requirement for the development:

- $17.4 + 17 = 34.4 \text{ spaces}$

The applicants Land Transport, Traffic, Parking & Servicing Impact Assessment specifies that 33.2 spaces are required, when considering the reduction in seven swing moorings. The figure of 33.2 spaces generated is accepted by Council, given the minor variation of one space.

With the historical shortfall it is noted the Applicant and Council were actively working together to try and resolve parking issues in the wider area for a community benefit. The Applicant was agreeable to absorbing and designing around the existing parking shortfall (even though arguably some of it wasn't as a direct result of their respective development).

21.14.2. Depot (valet parking)

The applicant has proposed 33 parking spaces to be provided for within an off-site depot (valet parking) at Unit 2 & 3 324 Soldiers Point Road, Salamander Bay. As the spaces are provided off-site the applicant acknowledged the need to provision of additional parking within proximity to the marina.

The proposal is not supported as the legal nexus between the Soldiers Point Marina and the depot site has not been established. The properties appear in separate ownership. The applicant has not demonstrated to Council that the depot shall operate in perpetuity for the life of the marina development. This site is the subject of a lease arrangement between the owner of this site and the applicant. As such, any approval for Valet Car parking on this site is subject to lease arrangement and is not considered to be a sound legal arrangement given the possible future sale of that site. Further, the applicant has failed to demonstrate the likely demand and take up of this service.

In pre lodgment correspondence council did advise that it was both happy to use the Department of Planning rate for parking provision and also that valet parking could 'in principle' work. This was all qualified with the fact that it did not comply with the current DCP and as part of the application, a detailed justification would be required. As part of the assessment process concern was raised for the short stage patrons willingness to use the valet parking, however agreeable that it would work in longer term situations with the right governance frame work.

The depot (valet parking) is not an acceptable solution (in its own right or standalone) as Council is not guaranteed certainty as to the life of the depot operation or its on-going association with the marina facility. Therefore, the 33 spaces provided within the depot do not satisfy Council's parking requirements.

21.14.3. 2 Sunset Boulevard

In conjunction with the proposed depot the applicant proposes to formalise the existing gravel car park to accommodate 20 car parking spaces at the existing car parking site for the facility, No.2 Sunset Boulevard. The parking design also includes two valet spaces and a garbage bin enclosure.

The car parking proposed at 2 Sunset Boulevard is considered acceptable subject to compliance with relevant Australian Standards.

The applicant also proposes a garbage bin enclosure. No plans or details have been provided. However, Council does not support garbage bin storage in this location as it fronts Sunset Boulevard and Ridgeway Avenue and will have a detrimental impact to the visual amenity of the public domain.

21.14.4. Spencer park

Following preliminary assessment and discussion of the application with Council the applicant proposed to further address Council's concerns regarding provision of car parking by proposing to formalise on-street car parking at No.2A Soldiers Point Road ('Spencer Park').

The proposal is not supported at Spencer Park as a sufficient 10 metre no stopping area has not been provided. Further the land subject to the proposal is community land, and requires reclassification and land owners consent in order for the proposal to proceed.

21.15. Water transport issues (Navigation)

Navigation and safety has been identified in the DGRs as a matter to be addressed. Requirements are included assess the impacts on water based traffic and waterway users (including recreational boaties and fishers) waterway sharing, impacts on other existing users of Port Stephens and access to any swing moorings.

RMS provided GTAs and consider that a minimum 40 metre navigational channel is required to ensure safe passage. The applicant has provided a 50 metre navigational channel.

A number of submissions (round 1: 386, round 2: 81 and round 3:33) raised concern with the privatisation of public waterways for the benefit of the private users of Soldiers Point Marina. The proposed extension comprises totaling 8988 square metres. The extension of the Marina dramatically reduces the available waterway between the Marina and Dowardee Island. However, in light of the scale of waterways available to the public in the locality the increase private lease area is not a fundamental concern to Council.

21.16. Hazards assessment

The applicant has not provided detail or identified the materials stored on the site which have a Dangerous Goods Classification, quantities and proposals for safe storage. Further the applicant has not detailed the mitigation and

management measures in place to control impacts and to ensure compliance with relevant standards.

The applicant proposes a substantial extension to the exiting Marina facility and details are required as to whether the existing facilities can cater for the storage of hazardous materials to cater for the additional berths.

A detailed hazards assessment is required that addresses potential hazards from: fire, explosion or release of chemicals and natural occurrences such as floods or storms.

21.17. Economic issues

Should the application be approved it is likely there would be a range of favourable economic impacts on the locality, for example additional trade and activity from the boat users. Upgrading of parking facilities in the area would also be an extra incentive for people to visit given the improved functionality of the parking situation.

The applicant has not provided information regarding the economic impacts of the proposed development. The Guidelines for preparation of EIS for Marinas and related facilities specifies that consideration be given to the effect of the proposal on other marinas, boat users, boating services and assessment of the affordability of marina services. Further, the applicant has not addressed the potential economic impacts of the proposal upon other industries both within the immediate locality and wider community including: tourist facilities, agriculture, aquaculture, commercial fishing and boat building.

21.18. Cumulative impacts

The NSW Department of Urban Affairs and Planning, EIS Guidelines for Marina's and Related Facilities, stipulate that the cumulative impact of Marina facilities should be addressed and must consider; existing or past marina operations, cumulative impacts upon coastal morphology/water quality, impacts to vegetation or fauna habitat , and loss of access to public land and waterways. The advantages and disadvantages of clustering marina operations should also be assessed.

The applicant has not addressed the cumulative impacts of the proposed Marina extension. Notwithstanding, the cumulative impact of the proposal is not considered to be satisfactory as a result of the proposals impact to ecology, visual impact and uncertainty surrounding the impact to Aboriginal cultural heritage and hydrological processes.

OTHER MATTERS FOR CONSIDERATION (79(C))

22. THE SUITABILITY OF THE SITE

22.1. Soldiers Point Marina

The Marina and Related facilities EIS Guideline prepared by NSW Department of Urban Affairs and Planning (1996) identifies that site selection to ensure an appropriate location for marina facilities is essential to ensure that the facility operates in an environmentally acceptable manner. Environmental and social characteristics of the location will be given high priority.

Given the significant site constraints affecting the proposed marina expansion site, coupled with existing parking/traffic issues within the Soldiers Point locality, Council does not accept that the existing Soldiers Point Marina is an appropriate site for the scale of Marina facility proposed.

22.2. 2 Sunset Boulevard

2 Sunset Boulevard has a historic use as a car parking facility. The site is suitable for the on-going use as a car park.

22.3. 2A Soldiers Point Road

2A Soldiers Point Road is classified as Community Land. Until the site is appropriately reclassified (to operational) the site is not suitable for the proposed development.

22.4. Unit 2 & 3 324 Soldiers Point Road, Salamander Bay

Unit 2 & 3 324 Soldiers Point Road is zoned industrial and has an existing industrial warehouse located on site. The site is suitable for the purpose of a depot. However, the use of a depot on this site to facilitate the expansion of the Soldiers Point Marina is not considered appropriate given there is no legal nexus between the subject site and the marina site.

22.5. Overall site suitability

The overall: ecological impacts, insufficient car parking, visual impacts, and potential impact to Aboriginal Cultural Heritage, resulting from the proposed marina extension have been considered to be unacceptable. The subject site is therefore considered to be unsuitable for the proposed development.

23. THE PUBLIC INTEREST

23.1. Double Bay Marina v Woollahra Council

In the Land & Environment Court (LEC) judgement, *Double Bay Marina v Woollahra Council* [2009] NSWLEC 1001, (Double Bay Marina) Roseth SC set out a planning principle for discerning the public interest. Although the planning principle was intended to apply to the assessment of all development applications, it is particularly relevant to this proposal as it also related to a proposed marina development.

It is noted that the planning principle set out in the Double Bay Marina judgement has not been formally adopted by the LEC as a planning principle. Advice from the Court suggests it will not be adopted as a planning principle.

Nevertheless, the judgement does set out a methodology for assessing public interest that is considered to be of some relevance and is therefore discussed below.

The *Double Bay Marina* judgement sets out 3 steps for discerning the public interest in the assessment of a development proposal:

1. define the public whose interest is being invoked;
2. define the benefit towards which a proposal claims to make a contribution (or from which it is claimed to detract); AND
3. make explicit the weight given to the public interest relative to other considerations.

23.2. Define the interest affected

In *Double Bay Marina* it is identified that "*the public*" requires redefinition in every case. In relation to the subject proposal, the public is considered to be the users of the nearby public domain areas. These areas are specifically considered to be Everitt Park, Soldiers Point Holiday Park, and Sunset Beach.

The people who made submissions opposing the DA are considered to be the public only if they are also users of the public domain areas referred to above. However, some of the issues raised in some of the submissions relate to matters of public interest, e.g. impacts to ecology and impact to use and enjoyment of the public waterway.

Similarly the holders of marina berths and moorings are considered to be the public only if they are also users of the public domain areas. Otherwise those people who made submissions or are holders of marina berths or moorings are considered to represent private interests.

23.3. Benefit and/or detriment

The finding of *Double Bay Marina* then requires that it must be made explicit the benefit to which a proposal contributes or from which it detracts. The competing public and private interests in relation to Marina facilities per *Double Bay Marina* are summarised as:

- view loss, which is a public detriment;
- the provision of disabled facilities in the renewed marina, which is a public benefit;
- the significant loss of views of dwellings, which is a private detriment;
- the provision of improved mooring facilities for the future users of the existing marina, which is a private benefit.

In relation to the inclusion of swing moorings into marina berths the Senior Commissioner commented as follows:

"The conversion of swing moorings into marina berths therefore increases the area of water available for navigation. Against this is the consideration that the visual impact of a swing-moored boat is much less than that of a boat berthed in a marina. Therefore if one considers ease of navigation more important than visual impact, the conversion of swing moorings to marina berths is a public benefit; while, if one adopts the opposite position, it becomes a public detriment".

Applying the above approach to the current proposal:

- the impact on the outlook of people using Everitt Park, Soldiers Point Holiday Park, and Sunset Beach is a public detriment,

- the proposal does not include the provision of facilities for persons with a disability,
- the proposal does not result in view loss to residential dwellings,
- the proposal reduces the area for navigation along with additional berthing in place of existing moorings, which combined results in a public detriment.

23.4. Assessing the public interest

Double Bay Marina the Senior Commissioner discussed this step as follows:

"The final and most difficult step is the ranking of the various interests. This may require weighting one public interest against another or balancing the public interest against private interests".

In applying this step to the current proposal the impact to views from Everitt Park, Soldiers Point Holiday Park and Sunset Beach, would have a high rating as they are highly accessible to the public. As outlined within section 21.9. The visual impact of the proposal is not acceptable.

This final step for discerning public interest as set out in *Double Bay Marina* is to weigh the public disbenefits, as described above, against the public benefits. The public benefit in the case of *Double Bay Marina* was considered to be limited to the provision of facilities for use by people with a disability. The subject development proposal does not include provisions of facilities for use by people with a disability.

Following the logic in *Double Bay Marina* the proposed marina expansion does not provide a public benefit, the development results in adverse impacts to local ecology and potential significant impact to Endangered Species. Further, the expansion has an unacceptable visual impact when viewed from public places along the Soldiers Point Foreshore area (Sunset Beach and Everitt Park).

The benefits of the proposal are limited to the private benefit to existing and future patrons of the Marina facility by way of provision of additional berthing opportunities.

23.5. Conclusion

This assessment has endeavored to quantify the benefits and disbenefits, and has identified that there are limited public benefits resulting from the proposal and numerous disbenefits which are not able to be mitigated. The private benefits to boat owners, through improved boating facilities, is not of sufficient weight to justify the expansion of the existing marina facilities.

The proposal is not considered to be satisfactory in terms of the public interest.

24. ECOLOGICALLY SUSTAINABLE DEVELOPMENT (ESD)

Section 5(a)(vii) of the EPA Act provides that an objective of the Act is to encourage ESD. Under s.79C(1)(e) of the EPA Act consideration of the public interest is required if it is relevant to the development. Whether this development is ESD is a matter for consideration.

Section 8 of the *Local Government Act 1993* contains a charter for Councils that includes the requirement to *properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible,*

in a manner that is consistent with and promotes the principles of ecologically sustainable development.

There are a number of Land & Environment Court cases involving ESD principles. *BGP Properties Pty Limited v Lake Macquarie City Council [2004] NSWLEC399 (12 August 2004)* and *Telstra Corporation v Hornsby Shire Council [2006] NSWLEC 133* are among those more frequently referenced. These judgements explain the concept of the precautionary principle, its constituent elements and an analytical framework for its application, including in NSW environmental and planning laws. Part 8.3 of the EIS comments on these ESD principles. Each of the ESD principles is discussed below. The comments rely on assessments and conclusions reached earlier in the report. They have not been reproduced in this part to avoid repetition.

24.1. Precautionary principle

The precautionary principle establishes that should there be any threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

Council has applied the precautionary principle in its assessment and determined that there is insufficient information to support the proposal in light of potential impacts to the 'critically endangered' Beach Stone Curlew.

Based upon assessment of these documents it is concluded that the proposal may pose a threat of serious or irreversible environmental damage. Precautions to avoid environmental damage cannot be effectively implemented through the imposition of consent conditions. Further ecological and hydrological studies are required. The development proposal cannot be supported in its current form.

24.2. Inter-generational equity

Inter-generational equality requires that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations.

The applicant maintains that the proposal will have minimal impacts and does not adversely impact upon the diversity and productivity of the environment for future generations.

The proposal has the potential to have significant impact upon ecology and critically endangered species, and unknown impact to hydrology and Aboriginal cultural heritage. Further, the change in the visual appearance of the Soldiers Point Marina will impact upon future (and current) generations perceptions and appreciate of the Soldiers Point aesthetic qualities.

24.3. Conservation of biological diversity and ecological integrity

Principles of ESD stipulate that the conservation of biological diversity and ecological integrity should be a fundamental consideration.

The development is likely to have a significant impact upon the 'critically endangered' Beach Stone Curlew. The proposal fails to conserve biological diversity and ecological integrity.

24.4. Improved valuation, pricing and incentive mechanisms

Environmental factors should be included in the valuation of assets and services, e.g. polluter pays. Environmental goals should be pursued in the most cost effective way. The applicant notes the Soldiers Point Marina is a carbon neutral marina under the Marina Industries Association of Australia's Low Carbon Marina Initiative.

The applicant has not provided sufficient detail upon energy and water efficiency noting that there is limited opportunity to implement energy and water efficiency measures across the entire marina facility. The applicant has provided limited information in regards to energy and water efficiency preventing a detailed assessment of these matters.

24.5. Overall satisfaction of ESD

Assessment of the proposed development identifies that the proposed extension is not consistent with, and is unacceptable having regard to, the provisions of ESD.

25. RECOMMENDATION

THAT the Joint Regional Planning Panel, as the consent authority, refuse development consent to 16-2012-57-1 (2012HCC010) for extension to Soldiers Point Marina, depot and associated car parking, on land detailed below, for the reasons set out in section 26:

*Lot 1 DP 1058490 – 2E Ridgeway Avenue, Soldiers Point.
Lot 2 DP 1058490 – 2F Ridgeway Avenue, Soldiers Point.
Lot 539 DP 823769 – 2C Ridgeway Avenue, Soldiers Point.
Unidentified land subject to lease extension
Lot 197 DP 27084 – 2 Sunset Boulevard, Soldiers Point.
Lot 2 & 3 SP 59025 – Unit 2 & 3 Soldiers Point Road, Salamander Bay.
Lot 205 DP 27084 – 2A Soldiers Point Road, Soldiers Point (Spencer Park)*

26. REASONS FOR REFUSAL

8. Insufficient and Inadequate Information

The applicant has provided insufficient and inadequate information to facilitate a thorough assessment of the development.

Particulars

The applicant has failed to provide the following information:

- Owners consent (Strata Corporation, Council and Dept.Lands);
- Species Impact Statement;
- Aboriginal Cultural Heritage Assessment;
- Hydrological Assessment;
- Accessibility Audit;
- Hazards Assessment;
- Arborist Assessment (Spencer Park Trees);
- Economic Impact Assessment ; and
- Compliance with principles of ESD.

9. Port Stephens Local Environmental Plan

The proposed development is inconsistent with the applicable aims and objectives of the following clause(s) and/or zone(s) of Port Stephens Local Environmental Plan 2013:

- 7(w) 'Environmental Protection 'W' (Waterways Zone)'

As such, the proposal is unsatisfactory with regards to section 79c(1)(a)(i) Environmental Planning and Assessment Act 1979.

Particulars

The proposed development is not satisfactory when tested against the zone objectives. The applicant has not submitted a Species Impact Statement (SIS) and based upon the information provided with the development

application Council has determined that the development is likely to have a significant adverse impact upon the natural environment.

Council also considers that there is potential for the proposal to adversely affect coastal processes, the required hydrological assessment for Council to assess and determine these impacts has not been submitted.

10. Port Stephens Development Control Plan

The proposed development fails to conform to the controls contained within Port Stephens Development Control Plan (B2 Environmental Management) and is inconsistent with section 79c(1)(a)(iii) Environmental Planning and Assessment Act 1979.

Particulars

The development does not satisfy the requirements of Chapter B2 Environmental Management

11. Environmental Impact

The development has the potential to result in an adverse impact on the environment, and is unsatisfactory when considered against the provisions of section 79c(1)(b) Environmental Planning and Assessment Act 1979.

Particulars

The development is considered to have the potential to adversely impact the Beach Stone Curlew. The applicant has failed to provide a Species Impact Statement (SIS).

Further, the development may result in impacts to significant trees located in Spencer Park.

12. Site Suitability

The site is unsuitable for the proposed development and is not consistent with the provisions of Section 79c(1)(c) Environmental Planning and Assessment Act 1979.

Particulars

The overall: ecological impacts, insufficient car parking, visual impacts, and potential impact to Aboriginal Heritage, of the proposed marina extension have been considered to be unacceptable. The subject site is therefore considered to be unsuitable for the proposed development.

13. Community Consultation

The issues of concern raised in public submissions relating to remain unresolved. In this regard, the proposal is not consistent with the provisions of section 79c(1)(d) Environmental Planning and Assessment Act 1979.

Particulars

The applicant has failed to provide sufficient information, nor sufficiently justify and/or address the proposed developments impact upon:

- Ecology
- Visual impact
- Car parking
- Use of community land
- Provision of facilities for persons with a disability.

14. Public Interest

The proposed development is not in the public interest. In particular the proposal fails to provide a development that is appropriate for the site given existing site constraints and character of locality. As such, the proposal is not consistent with the provisions of section 79C(1)(e) *Environmental Planning and Assessment Act 1979*.

Particulars

The proposal results in numerous dis-benefits including:

- The visual impact on the outlook of people using Everitt Park, Soldiers Point Holiday Park, and Sunset Beach is a public detriment,
- the proposal does not include the provision of facilities for persons with a disability,
- the proposal reduces the area for navigation along with additional berthing in place of existing moorings, which combined results in a public detriment.

Amy Stone
Senior Development Planner
Port Stephens Council

ANNEXURES

- Annexure 1 - Development Plans**
- Annexure 2 - Internal Referral – Building Surveyor**
- Annexure 3 - Internal Referral – Fire Safety Officer**
- Annexure 4 - Internal Referral – Development Engineer**
- Annexure 5 - Internal Referral – Traffic Engineer**
- Annexure 6 - Internal Referral – Natural Resources**
- Annexure 7 - Internal Referral – Heritage Officer**
- Annexure 8 - External Agency Advice – NSW Department of Primary Industries (Fisheries)**
- Annexure 9 - External Agency Advice – NSW Department of Primary Industries (Great Lakes Marine Park)**
- Annexure 10 - External Agency Advice – NSW Environmental Protection Agency**
- Annexure 11 - External Agency Advice – Roads & Maritime Services**
- Annexure 12 - External Agency Advice – Office of the Environment & Heritage**
- Annexure 13 - External Agency Advice – NSW Department of Planning & Environment**
- Annexure 14 - External Agency Advice – NSW Office of Water**
- Annexure 15 - Submission Summary**
- Annexure 16 - No. 2 Sunset Boulevard Zoning**
- Annexure 17 - No. 2C Ridgeway Avenue Zoning & No. 2E and 2F Ridgeway Avenue Zoning**
- Annexure 18 - Unit 2 & 3, 324 Soldiers Point Rd, Salamander Bay Zoning**
- Annexure 19 - No. 2A Soldiers Point Road Zoning**