

# JOINT REGIONAL PLANNING PANEL

## Hunter and Central Coast

JRPP No	<b>2014HCC028</b>
DA Number	<b>DA/1503/2014</b>
Local Government Area	<b>Lake Macquarie City</b>
Proposed Development	<b>Marina, associated building, carparking, landscaping and stormwater works</b>
Street Address	<b>41, 49, 69C and 71 Trinity Point Drive, Morisset Park NSW 2264, Public Reserve and Lake Macquarie itself</b>  <b>Lots 31, 32 and 34 DP1117408 and Lot 410 DP1139690</b>
Applicant/Owner	<b>Applicant:</b> <b>Johnson Property Group Pty Ltd</b>  <b>Owners:</b> <b>The Trustees of the Hospitaller Brothers of St John of God; and Lake Macquarie City Council; and NSW Trade and Investment - Crown Lands</b>
Number of Submissions	<b>127</b>
Regional Development Criteria	<b>8(b) Particular Designated Development - Marina</b>
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> <li>• <b>Concept Approval 06_0309 Mod 2</b></li> <li>• <b>SEPP 19 Bushland in Urban Areas</b></li> <li>• <b>SEPP 33 Hazardous and Offensive Development</b></li> <li>• <b>SEPP 71 Coastal Protection</b></li> <li>• <b>Lake Macquarie Local Environmental Plan 2004</b></li> <li>• <b>Draft Lake Macquarie Local Environmental Plan 2014</b></li> <li>• <b>Lake Macquarie Development Control Plan No 1 – Principles of Development</b></li> </ul>
List all documents submitted with this report for the panel's consideration	<ul style="list-style-type: none"> <li>• <b>Environmental Impact Statement Volumes 1 and 2</b></li> <li>• <b>Additional Information – Addendum to Concept Accessway</b></li> <li>• <b>Additional Information – Comments 1 April 2015</b></li> <li>• <b>Additional Information – Responsible Boating Practice Manual</b></li> <li>• <b>Additional Information – Cultural Heritage Management Plan and Heritage Interpretation Policy</b></li> <li>• <b>Combined Submissions</b></li> </ul>
Recommendation	<b>Approval subject to conditions</b>
Report by	<b>Chris Dwyer, Principal Development Planner, Lake Macquarie City Council</b>
Report date	<b>4 June 2015</b>

# **DESIGNATED DEVELOPMENT ASSESSMENT REPORT**

**DA/1503/2014**

**Proposal:** Marina and associated building, car parking, landscaping and stormwater infrastructure

**Address:** Lots 31, 32 and 34 DP1117408 and Lot 410 DP1139690  
41, 49, 69C and 71 Trinity Point Drive, Morisset Park NSW 2264, Public Reserve and Lake Macquarie itself

**Applicant:** Johnson Property Group Pty Ltd

**Owner:** The Trustees of the Hospitaller Brothers of St John of God; and  
Lake Macquarie City Council; and  
NSW Trade and Investment - Crown Lands

**Lodged:** 18 September 2014

**Value:** \$8 million

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## **Precise**

The Trinity Point Marina and Tourist development was approved by the (then) Minister for Planning on 5 September 2009. The approval consists of a 188 berth marina, 150 accommodation units, restaurant, café, function centre, shops and office, parking landscaping and boardwalk (Concept Approval 06\_0309).

One condition of this approval (B1) required that prior to any development application being lodged, a revised design be undertaken to improve the environmental performance of the marina.

The design of the marina was then amended pursuant to condition B1 of the Concept Approval and endorsed by the Department of Planning and Environment on 9 July 2014.

The concept approval 06\_0309 was then modified to cater for the revised design of the marina (with some boundary changes) and some alterations to the original conditions of approval. Known as 'MOD 2', the Planning Assessment Commission approved the modification on 9 April 2015.

Designated Development Application DA/1503/2014 for a 94 berth Marina and associated land based facilities was lodged with Council on 18 September 2014. The development is defined as 'designated' by the Environmental Planning and Assessment Regulation 2000, as it is a marina of a capacity of 80 or more vessels. The development is also 'regional development' defined by the Environmental Planning and Assessment Act 1979 as it is a marina that is designated development. The Hunter and Central Coast Joint Regional Planning Panel is the consent authority.

A summary of the approval and assessment process is contained at Appendix E to this report.

The marina and land based development is approved through the Concept Plan as depicted in the figure below:





**Figure 2 – Concept Approval –Mod 2 - Marina**



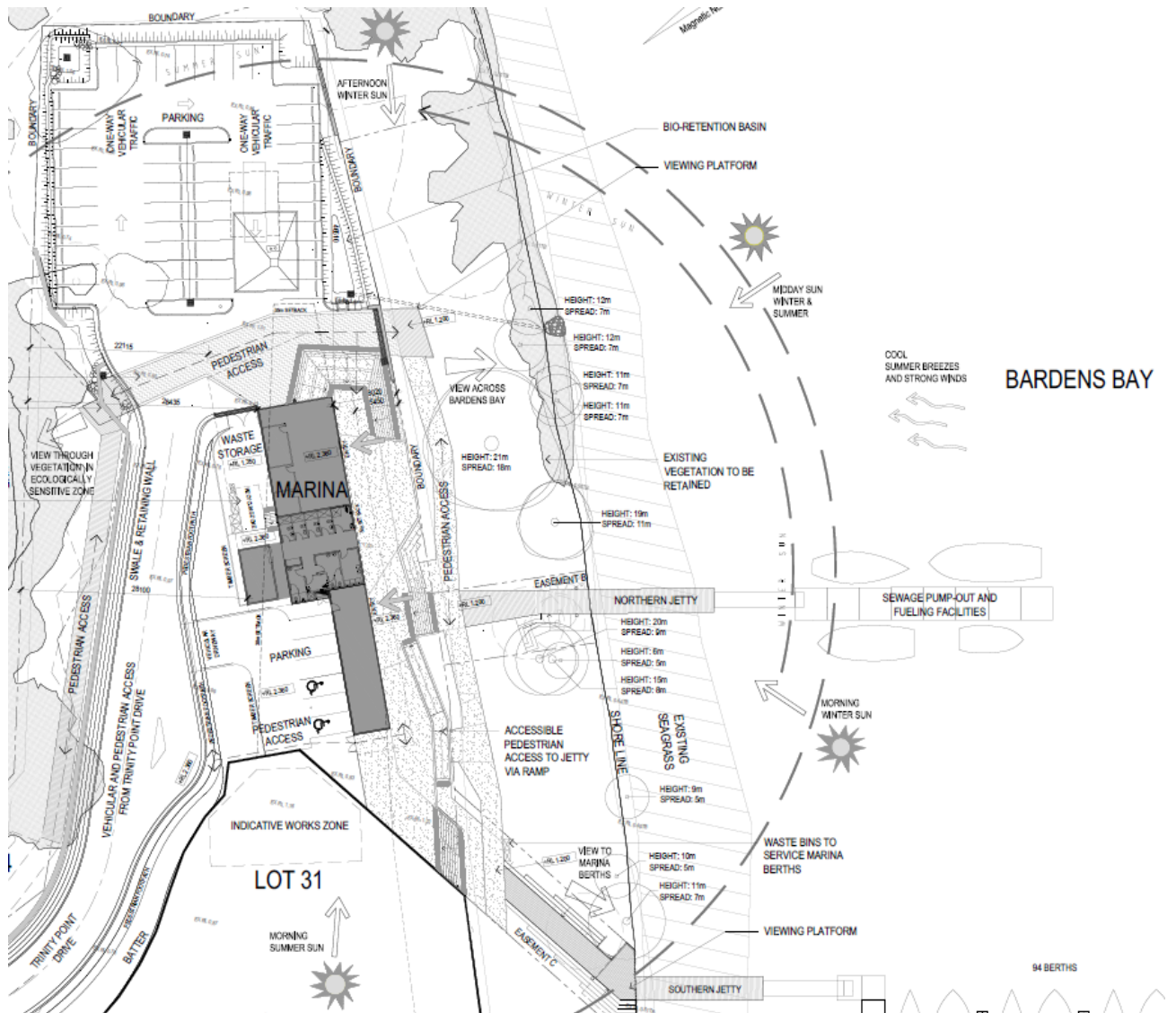


Figure 3 – Concept Approval – Mod 2 – Land Based building and car park



1 PERSPECTIVE LOOKING WEST FROM WATER - MARINA DA  
scale - NTS @ A1



2 PERSPECTIVE LOOKING WEST FROM FORESHORE - MARINA DA  
scale - NTS @ A1

#### Figure 4 – Perspectives of Land based building

The modified Concept Approval references the following plans by Royal Haskoning DHV and includes additional and modified conditions of approval:

- Modification dated 15 August 2014 (Mod 2) prepared by the Johnson Property Group;
- Concept Marina Layout Overall, 8A0379-MA\_LB031 dated 4 August 2014 Revision B;
- Concept Marina Layout Stage 1a & 1b 8A0379-MA\_LB021 dated 4 August 2014 Revision B; and
- Concept Marina Layout Stage 1a 8A0379-MA\_LB011 dated 15 January 2014 Revision C.

## **Proposed Development**

The proposal includes:

- erection of 94 marina berths in two stages 1a and 1b;
- a single storey land based office, chandlery, lounge and amenities building including 5 car parking spaces;
- an at grade 47 space car park; and
- associated vehicle access, landscaping and earthworks and stormwater drainage and management facilities.

The plans and documentation lodged with the development application are consistent with the Concept Approval 06\_0309 Mod 2 (as shown above)

## **Requirements of Concept Approval 06\_0309 including Mod 2**

The Concept Approval requires certain matters to be undertaken prior to a development application being lodged, and then requires certain matters to be addressed with the development application.

The relevant provisions of the Concept Approval as they relate to this development application are detailed below:

**Term A1 – Development Description;**

**Term A2 – Project in Accordance with Plans; and**

**Term A3 – Development in Accordance with Documents**

The development application is generally consistent with the concept approved modified application dated 15 August 2014 (Mod 2) prepared by Johnson Property Group and the approved plans as identified in Term A2 and the approved documentation identified in Term A3.

**Term A6 – Determination of Future Applications**

Determination of this development application is to be generally consistent with the terms of approval of Concept Plan 06\_0309. This application is considered to be consistent with the Concept Approval.

**Term B1 – Construction of Marina**

The design has been modified under this condition and endorsed by the Department of Planning and Environment on 9 July 2014 as included as Appendix D to the EIS.

**Term B2 – Marina Staging**

Stages 1a and 1b shall not exceed 94 berths in total. The DA complies with this provision.

Stage 1a sewer pump out – The DA complies with this provision. This is also able to be imposed as a condition of development consent, if issued.

**Term B5 – Urban Design Guidelines**

Term B5 provides details on the Urban Design Guideline Principles. The Principles relevant to this Marina application are addressed below:

*Principle 4 – Public Access and Open Space*

The design and siting of the roads and pedestrian paths allows for Council to access the 6(1) zoned land for maintenance and the like.

*Principle 8 – Vegetation*

Provision of a landscape plan with the first development application. This landscape plan has been provided in this DA.

### *Principle 11 – Water Management*

The boat lift, repair workshop and vessel hardstand area have been removed from the proposal. A stormwater management assessment is lodged with the DA as Appendix J to the EIS.

### *Principle 14 – Marina*

Limit in terms of boat length (20 metres and 30 metres) and draught (1.9 metres). The DA is consistent with the requirement, and a condition of development consent will be imposed, if consent is issued.

### *Principle 16 – Acoustics*

An Acoustic Criteria Report has been provided as Appendix Q.

### **Term C1 – Consistency of Future Development with Concept Plan as modified**

The development application is considered to be consistent with the approved Concept Approval including Mod 2.

### **Term C2 – Building Setback**

The required setback of 28 metres from the unnamed inlet and 6 metres from the eastern boundary is complied with.

### **Term C7 – Traffic and Parking**

A Traffic Impact Assessment Report and Marina Traffic Impact Assessment is included in Appendix R to the EIS, in compliance with this Term.

### **Term C8 – Sustainability**

The application successfully addresses sustainability requirements in compliance with this Term.

### **Term C9 – Vegetation Management Plan – Marina Component**

A VMP has been lodged as Appendix M to the EIS, in accordance with this Term.

### **Term C10 – Landscape Plan**

Landscape plans and documentation have been lodged with the EIS and as Appendix F to the EIS, in compliance with this Term.

### **Term C11 – Verification of Baseline Data (Water Quality)**

The Baseline Data lodged with Lake Macquarie City Council setting the water quality parameters has been verified in accordance with this Term.

### **Term C12 – Final Marina Design**

Not all stages of the marina are to be built under this development application. Appendix I provides 3D Hydrodynamic Model Investigations Report and Aquatic Ecology Investigations Report at Appendix K of the EIS demonstrate compliance with this Term as far as Stage 1 of the marina is concerned.

### **Term C13 – Stages 1a and 1b – Marina Environmental Performance Monitoring**

The Construction Environmental Management Plan details the monitoring of the marina construction and one years from commencement of operation, in compliance with this Term.

### **Term C15 – Responsible Boating Practice Manual**

A Responsible Boating Practice Manual has been lodged with the development application in accordance with this Term.

**Term C17 – Bushfire Protection**

The landscaping is considered to be consistent with this Term.

**Term C18 – Implementation of the Vegetation Management Plan**

The information contained in the lodged VMP includes details of the implementation of the vegetation for the first stage marina DA. This combined with proposed conditions of consent relating to vegetation management and implementation are considered to satisfy this Term.

**Term C19 – Stormwater Management – Marina Development**

The SWMP lodged with the EIS is assessed as satisfactory and meets the requirements of this Term.

**Term C20 – Groundwater**

The impact of the development on groundwater has been addressed in the EIS and in particular Appendix K. This Term is considered to be satisfied.

**Term C21 – Flooding**

The Flood Risk Management Plan at Appendix J to the EIS satisfies this Term.

**C22 – Aboriginal Heritage**

A final Cultural Heritage Management Plan and final Heritage Interpretation Policy have been lodged with the application in accordance with this Term. The documents have been notified to the local Aboriginal community and assessed as adequate and appropriate by both LMCC and the Office of Environment and Heritage.

**C23 – Erosion and Sediment Control**

A Soil and Water Management Plan, Stormwater Management Report and Basis of Design Report are included in the EIS as Appendices E, J and G respectively. This information is consistent with this Term.

**C24 – Construction Management Plan**

A Construction Management Plan is lodged as Appendix W to the EIS and conforms with this Term.

**C25 – Acoustic**

An Acoustic Criteria Report with a supplementary Stage 1 Marina Specific Acoustic Assessment has been lodged as Appendix Q to the EIS in compliance with this Term.

**C26 – Public Access**

The application includes plans and documentation demonstrating compliance with this Term.

**C27 – Mine Subsidence**

The Mine Subsidence parameters as contained in Term C26 (as modified by Mod 2) shall be included as a condition of development consent, if issued.

**C28 – Staging**

The staging of the marina as proposed under this development application is consistent with this Term.

**C29 – Recreational Boating Impacts**

Appendix AC of the EIS includes a recreational boating snapshot analysis in accordance with this Term.

### **C30 – Marina Car Park**

The Term requires the level of the carpark to be set above the ARI 20 year flood level of 1.23AHD. The plans indicate that this level is able to be achieved and this is also able to be imposed as a condition of consent, if issued.

### **C31 – Marina Safety**

The information regarding signage and navigational aids and sinking vessel retrieval has been lodged with the application as an amendment and complies with this Term.

### **Summary**

It is confirmed that the designated development application, EIS and accompanying plans, documentation, appendices and amended information complies with the provisions of the Concept Approval 06\_0309 MOD 2 dated 9 April 2015.

The original approval and MOD 2 documents are included at **Appendix A** to this report.

## Assessment

This report provides an assessment of the material presented in the application against all relevant State and local planning legislation and policy.

### Section 79C: Potential Matters for Consideration

#### 79C(1)(a)(i) the provisions of any Environment Planning Instrument (EPI)

##### *SEPP 19 – Bushland in Urban Areas*

The proposal intends to disturb bushland both on a Reserve owned by Council, and on the land adjacent to the Reserve.

Clause 6 of the SEPP provides that:

#### **6 Consent to disturb bushland zoned or reserved for public open space**

- (1) *A person shall not disturb bushland zoned or reserved for public open space purposes without the consent of the council.*
- (2) *...*
- (3) *Pursuant to section 30 (4) of the Act, the provisions of sections 84, 85, 86, 87 (1) and 90 of the Act apply to and in respect of development referred to in subclause (1) in the same way as those provisions apply to and in respect of designated development.*
- (4) *A consent authority shall not consent to the carrying out of development referred to in subclause (1) unless:*
  - (a) *it has made an assessment of the need to protect and preserve the bushland having regard to the aims of this Policy,*
  - (b) *it is satisfied that the disturbance of the bushland is essential for a purpose in the public interest and no reasonable alternative is available to the disturbance of that bushland, and*
  - (c) *it is satisfied that the amount of bushland proposed to be disturbed is as little as possible and, where bushland is disturbed to allow construction work to be carried out, the bushland will be reinstated upon completion of that work as far as is possible.*

Clause 9 of the SEPP provides that:

#### **Land adjoining land zoned or reserved for public open space**

- (1) *This clause applies to land which adjoins bushland zoned or reserved for public open space purposes.*
- (2) *Where a public authority:*
  - (a) *...*
  - (b) *proposes to grant approval or development consent in relation to development on land to which this clause applies,*  
  
*the public authority shall not ... grant the approval or development consent unless it has taken into account:*
    - (c) *the need to retain any bushland on the land,*
    - (d) *the effect of the proposed development on bushland zoned or reserved for public open space purposes and, in particular, on the erosion of soils, the siltation of streams and waterways and the spread of weeds and exotic plants within the bushland, and*



- (e) *any other matters which, in the opinion of the approving or consent authority, are relevant to the protection and preservation of bushland zoned or reserved for public open space purposes.*

With regard to Clause 6, the removal of native vegetation is confined to existing easements across the Council Reserve. The application has been notified in accordance with the SEPP. An assessment of the need to protect and preserve the bushland has been carried out and it is considered that the disturbance is essential and that minimal clearing is required. The proposal is deemed to be compliant with this clause of the SEPP.

With regard to Clause 9, the assessment has taken into account the need to retain bushland on the site and particular environmental impact of the disturbance. The proposal is minimal in its disturbance and is compliant with this clause of the SEPP.

#### *SEPP 33 – Hazardous and Offensive Development*

One 20,000 litre diesel underground storage tank and one 10,000 litre underground petrol storage tank are proposed.

The EIS includes at Appendix AD an analysis of the proposal against the provision of SEPP 33.

The combined storage is classed as 3PG II. Table 9 of SEPP 33 requires a setback of 3 metres to 'other uses' and 4 metres to 'sensitive users'.

The report indicates that the proposal complies with these setbacks and as such the materials and development is not considered to be potentially hazardous. The conclusions of this report are concurred with.

#### *State Environmental Planning Policy No 71 – Coastal Protection*

The Department of Planning and Environment advises in its letter of 7 October 2014 that the Director General's delegate does not specify any matters in addition to those set out in Clause 8 of the SEPP.

Clause 8 of the SEPP sets the following matters for consideration:

- (a) *the aims of this Policy set out in clause 2,*

The proposal is consistent with the aims of the SEPP.

- (b) *existing public access to and along the coastal foreshore for pedestrians or 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,*

There is no disability access at present, however an improvement is made to access to the foreshore through the development. Access for disabled persons will be made available to all components of the development including the marina boardwalk, marina buildings and car park.

- (c) *opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,*

See comments and (b) above.

- (d) *the suitability of development given its type, location and design and its relationship with the surrounding area,*

The development of the marina is considered suitable for the site and with the surrounding area.

- (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,*



Overshadowing and visual impacts are acceptable, as evidenced in the Visual Impact Assessment and plans and documentation lodged with the application. The development will not result in a detrimental impact on the amenity of the coastal foreshore.

- (f) *the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,*

The Visual Impact indicates that the impact of the marina and buildings on the scenic quality of the lake is acceptable.

- (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,*

No significant adverse impact on flora and fauna is evident from the development.

- (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*

Marina life and vegetation is not expected to be significantly adversely impacted by the development.

- (i) *existing wildlife corridors and the impact of development on these corridors,*

The development will not significantly impact upon any wildlife corridors.

- (j) *the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,*

The development will not be significantly impacted by, and will not adversely impact upon, coastal processes or coastal hazards.

- (k) *measures to reduce the potential for conflict between land-based and water-based coastal activities,*

The development will not result in conflict between land based and water based coastal activities.

- (l) *measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,*

The Cultural Heritage Management Plan and the Heritage Interpretation Policy lodged with the development application identify acceptable methods for the protection of significant Aboriginal cultural items and places. The local Aboriginal community was consulted with regard to the CHMP and HIP. This community raises issues with some of the methodology and some recommendations of these documents. The differences are addressed in the final CHMP and HIP lodged with Council on 30 May 2015. It is concluded that the development on balance provides adequate and appropriate methods to cater for the impact upon Aboriginal cultural significance.

- (m) *likely impacts of development on the water quality of coastal waterbodies,*

The water quality of the lake resulting from the marina development will be maintained to a satisfactory level.

- (n) *the conservation and preservation of items of heritage, archaeological or historic significance,*

The development does not impact on any items of environmental heritage.

- (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,*

Not applicable.

- (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.*

The marina will not cause significant adverse cumulative impact and identifies an efficient use of water and energy.

The relevant provisions of SEPP 71 have been considered and it is concluded that the proposal, whilst entailing development in the lake and on the coast, will result in minimal environmental impacts that are able to be mitigated by conditions of consent, if issued, to an acceptable level, when measured against the SEPP 71 matters for consideration.

*Lake Macquarie Local Environmental Plan 2004 (LMLEP)*

*Clause 16 Development Consent – matters for consideration*

- (a) *Lifestyle 2020 Vision, Values and Aims*

## **12 Vision**

*The vision for land to which this plan applies is described in the Lifestyle 2020 Strategy, which is available from the office of the Council.*

## **13 Values**

*The 4 core values of that strategy are sustainability, equity, efficiency and liveability.*

## **14 Aims**

*The aims of the Lifestyle 2020 Strategy are to:*

- (a) *provide the community with realistic expectations about the future development patterns for land in Lake Macquarie City, while retaining flexibility for land use decision making in the longer term, and*
- (b) *reinforce and strengthen centres so that a wide range of commercial and community services may be provided in a timely and accessible manner, and*
- (c) *provide local employment opportunities for residents and promote economic development consistent with the City's natural, locational and community resources, and*
- (d) *guide the development of urban communities that are compact, distinct and diverse and include a range of housing types and activities, and*
- (e) *achieve a strong sense of positive community identity, through the development of local communities that are safe and liveable and offer a diversity of uses, economic opportunities and ready access to services, and*
- (f) *develop an attractive urban setting for the City which reflects its physical and natural environment, and visual character, and*
- (g) *manage the City's natural environment so that its ecological functions and biological diversity are conserved and enhanced, and contribute to the City's overall well being, and*
- (h) *manage the City's heritage and economic resources in a way that protects the value of these resources and enhances the City's character, and*
- (i) *integrate land use with the efficient provision of public and private movement systems.*

The proposal is consistent with the vision, values and aims of Lifestyle 2020 Strategy.

(b) *Objectives of Zone*

At the time of lodgement of the application the land is zoned 11 Lakes and Waterways, 6(1) Public Open Space and 6(2) Tourism and Recreation pursuant to the LMLEP 2004 and the figure below:



**Figure 5 – Land Zoning – LMLEP 2004**

The relevant objectives of each zone are:

**Zone 6 (2) Tourism and Recreation Zone**

The objectives of this zone are to:

- (a) provide land primarily for commercial recreation and tourist uses, and
- (b) encourage good quality design within the zone, and
- (c) provide land for good quality tourist development, and
- (d) provide land for function and entertainment centres, and
- (e) encourage tourism development that is sensitively designed to complement its location and minimise any adverse impacts on the environment, and
- (f) provide for sustainable water cycle management.

**Zone 6 (1) Open Space Zone**

The objectives of this zone are to:

- (a) provide community owned land or land intended to be owned by the community (shown with crosshatching on the map) that is suitable for the passive and active recreation needs of the community, and
- (b) provide for a variety of facilities necessary to support use of this land including barbecue facilities, toilet facilities, sports administration and changing rooms, clubhouses, cycle ways, seating, lighting and the like, and
- (c) facilitate preservation of the environmental qualities of land identified in this plan for public ownership, and
- (d) provide for the use of public land leased from the Council where community benefit can be established and the use of the land is appropriate for its location, and
- (e) provide for sustainable water cycle management.

## **Zone 11 Lakes and Waterways Zone**

The objectives of this zone are to:

- (a) recognise the importance of Lake Macquarie and its waterways as an environmental asset, not only to Lake Macquarie City, but to the Hunter and Central Coast Regions, and
- (b) ensure that development of the Lake and its waterways occurs in a manner that is consistent with the principles of ecologically sustainable development, and
- (c) ensure development does not adversely affect the ecology, scenic values or navigability of the Lake or its waterways, and
- (d) ensure that aquatic and terrestrial habitats and their interface are protected and enhanced and are not adversely affected by the recreational use of the Lake or its waterways, and
- (e) provide for sustainable and viable economic use of the Lake and its waterways, and
- (f) provide for sustainable water cycle management.

The development is generally consistent with the relevant objectives of each zone.

### *Clause 17 Provision of essential infrastructure*

The application is accompanied by endorsed plans from Hunter Water. Through development of the adjacent land including residential subdivision as approved, it is considered that essential infrastructure for the development will be available when required for construction and operation of the marina and associated buildings.

### *Clause 21 Development the subject of SEPP 1 application*

Not applicable.

### *Clause 22 Foreshore Building Lines*

The land is not subject to a foreshore building line.

### *Clause 23 Foreshore development and development below DP high water mark*

There are no works within the foreshore requiring removal. Regarding the land based works on Council land, there is no objection from Council as the owner, however the following conditions shall be placed on any consent issued regarding the detail of the works.

- (a) Details concerning the construction of a shared pathway through Lots 32 and 34 DP 1117408 shall to be provided to and approved by Lake Macquarie City Council prior to the release of the first Construction Certificate.
- (b) Details of the boardwalks and access ways across the foreshore reserve Lot 32 DP 1117408 for access to the proposed marina shall be provided to and approved by Lake Macquarie City Council prior to the release of the first Construction Certificate.

### *Clause 24 Subdivision*

The application does not include the subdivision of any land.

### *Clauses 26, 27, and 28A*

Not applicable.

### *Clause 29 Building heights*

The building does not exceed 8 metres in height and as such this clause is not applicable.

### *Clause 30 Control of pollution*

The land based sources of pollution being waste areas and the in ground fuel tanks include appropriate bunding and emergency controls to protect the environment in the event of a spill, failure or similar.

Regarding the marina component, the responsible boating practice manual and operational management information contained in the EIS and Appendices indicates appropriate levels of safety measures regarding water pollution. This in combination with the recommended conditions of approval should ensure that the control of pollution is minimised and managed appropriately.

In addition to the management of the marina and introduction of physical intervention to avoid pollution, ongoing water quality is addressed in the concept plan approval.

Condition C11 of the Concept Approval provides that:

**C11      *Verification of Baseline Data for the Marina***

To ensure the satisfactory environmental performance of the marina the first stage application must provide verification of the following baseline data and where necessary provide new data in light of the review of the design:

1. current water flow and flushing characteristics in Bardens Bay, the small inlet/unnamed bay at the southern end of Bardens Bay and Petite Lake.
2. existing background concentrations of pollutants (eg. copper and zinc) in Bardens Bay and the marina location.
3. mapping and survey of the health and size of the seagrass bed to the south of the marina and the salt-marsh community in the unnamed inlet to the west.
4. survey of the foreshore to measure foreshore erosion from around the southern corner of the site to inside the unnamed inlet.

In response, the applicant provides Appendix H to the EIS which includes the first 3 out of 8 water quality monitoring events. On the 21 January 2015 and 1 April 2015 the applicant provided a further 3 monitoring results. On 20 May 2015 the applicant provided the final 2 monitoring results.

An assessment of these baseline water quality monitoring results was undertaken by Council's Environmental Systems Enhancement Coordinator and the baseline data is confirmed.

The baseline data is then used as a baseline for continued monitoring of the marina when constructed. This then allows a comparison between the existing environmental condition of the lake, and any changes as a result of the marina. The ongoing reporting of water quality impacts will be required as a condition of any consent that is issued.

*Clause 31 Erosion and sediment control*

Council's Erosion and Sedimentation Officer has reviewed the information contained within the EIS and is satisfied that the plans prepared by Royal Haskoning DHV will manage pollution, however these plans require additional information in a detailed sense at construction stage to ensure a high level of performance. Conditions of consent will be imposed on any consent issued, to this effect.

*Clause 32 Flood prone land*

The land is flood prone. The levels of the car park and buildings comply with the provisions of flood prone land and will be subject to a condition of consent, of any development consent.

*Clause 33 Bush fire considerations*

The land is bushfire prone.



**Figure 6– Bushfire Prone Land**

The applicant notes that the previous Bushfire Threat Assessment (HSO 2007), prepared in accordance with Planning for Bushfire Protection (2006) determined that vegetation mapped by the LMCC Bushfire Prone Land Map did not represent a bushfire hazard. In their response, based on the concept plans and information submitted for assessment, the NSW RFS did not disagree with the bushfire assessment conclusions. The NSW RFS provided the following minor comments in their response:

- Landscaping to the site is to comply with the principles of Appendix 5 of Planning for Bushfire Protection 2006; and
- Enhancement of the foreshore vegetation should not increase the bushfire risk.

Based on a review of the current LMCC Bushfire Prone Land Map (Certified 10 June 2011) and up to date aerial imagery, the applicant is of the opinion that the vegetation and site conditions have not changed and therefore the HSO (2007) bushfire assessment conclusions remain valid.

This opinion is supported. A condition shall be placed on any consent issued reflecting the RFS's comments.

#### *Clause 34 Trees and native vegetation*

Council's Tree Assessment Officer advises that the developed area of the proposal predominately relates to the existing cleared areas, however concerns are raised regarding potential impacts to trees that may have substantial construction activity, or excavations carried out within close proximity.

Tree protection measures are detailed on page 28 of the Vegetation Management Plan, which makes reference to the installation of exclusion fencing in accordance with AS4970 - 2009 – *Protection of Trees on Development Sites*, however concern is raised with the following:

1. Installation of the 300mm drainage pipe from the car parking area that runs to a stormwater headwall near the waters edge, with backfill cover within the Tree Protection Zone (TPZ) of *Casuarina* species to be retained along the foreshore.

An impact assessment is required for any tree potentially impacted by installation of the 300mm stormwater drainage pipe.

2. Trees to be removed within 'Easement B', and impacts of construction on trees identified for retention in vicinity.

The submitted 'Concept and Sedimentation Control Plan – 1 of 2' (Haskoning, September 2014) details a 'geo fabric layer and fill' in the vicinity of established trees to allow temporary access for a '100t crane' and further construction of a permanent access (boardwalk and utilities).

Two large significant *Eucalyptus tereticornis* (Forest Red gum) trees are located to the west of 'Easement B', where an arboricultural impact assessment and tree protection plan being compiled is considered appropriate.

3. Trees to be removed within 'Easement C', and impacts of construction on trees identified for retention in vicinity.
4. Any cut and fill or other retaining works, stormwater drainage/swales, boardwalk or pathway construction works that may impact on established trees located around the periphery of the proposal.

It is recommended that the proponent engage an appropriately qualified Consulting Arborist (AQF Level 5) to compile an arboricultural impact assessment and tree protection plan addressing the above points 1-4.

The above comments are agreed with and a condition of consent, if consent is issued, is considered appropriate requiring an arboricultural audit and tree assessment of the above four matters.

#### *Clause 35 Acid sulfate soils*

An acid sulphate soils assessment report by Douglas Partners is provided at Appendix P of the EIS. The development site has been identified as containing Class 2 Acid Sulphate Soils (ASS).

Conditions of consent shall require the preparation of an ASS Management Plan, implementation of the plan, monitoring and certification by the geotechnical engineer.

#### *Clauses 36, 37*

Not applicable.

#### *Clause 39 Additional Development Allowed on Certain Land*

Item number 15 in Schedule 7 is identified as the subject land. The provisions of this clause are beneficiary and provide for permissibility of certain land uses. Included in the table are land uses associated with a tourist resort that appears to be consistent with the Concept Approval 06\_0309. Schedule 7 does not specifically mention a marina however it is considered that the purpose of the Schedule to permit certain development on the land that is consistent with the provision of the marina and land based development that forms part of the Concept Approval for the tourist components.

#### *Clauses 40-41*

Not applicable.

#### *Clause 42*

Clause 42(2) provides that consent must not be granted on the land unless Council has had regard to a Masterplan for the site.

The Kendall Grange Masterplan addresses the land based components of the development. The marina and associated chandlery building and car park is not inconsistent with the provisions of the Masterplan, and therefore the LMLEP. Notwithstanding, as the



development is consistent with the Concept Approval any inconsistencies that may arise with the Masterplan (or LMLEP) are superseded by the Concept Approval.

*Clauses 43 – 48,*

Not applicable.

*Clause 50 – Development affecting places or sites of known or potential Aboriginal heritage significance*

A Cultural Heritage Management Plan and Heritage Interpretation Policy were lodged with the application.

In accordance with clauses 50(2) and 50(3), the local Aboriginal community was notified of the CHMP and HIP.

Council's Development Planner Heritage Focus makes the following comments on the application:

**Requirements of Condition 22 (MP 06\_0309)**

The following condition has to be addressed as part of the first stage of the development, i.e. the condition has to be met as part of this DA:

*MP 06\_0309, Condition 22:*

*An Aboriginal Cultural Heritage Management Plan and Interpretation Policy must be provided for the entire site and approved as part of the first stage of the development. The Interpretation Policy shall be developed in conjunction with the Aboriginal community and be based on the historical data, cultural knowledge and archaeological evidence specific to Trinity Point. The interpretation Policy shall provide a framework for interpretation of Aboriginal values and heritage of the site to the public, inclusions into site interpretation and development details.*

*Future applications must demonstrate that the following requirements regarding aboriginal heritage have been satisfied for each relevant stage of the development:*

- 1. Retain and conserve built heritage items including the sundial and grotto adjoining the foreshore lands.*
- 2. Significant built heritage items that are to be retained are to be adequately protected during the works from potential damage. Protection systems must ensure that historic fabric is not damaged or removed.*
- 3. Retain cultural landscape plantings including figs, palms and Norfolk Island Palms located near Bluff Point.*
- 4. An archival photographic record of the historic areas of the site in accordance with the NSW Heritage Council Guidelines for Photographic Archival recording in a Digital Capture Format prior to the commencement of any work on the site. The recording shall be referenced to a survey plan identifying the locations of all the images. A copy of the recording shall be lodged with the Department of Planning's Heritage Library and the Local Studies Collection of the Lake Macquarie Library.*

**Cultural Heritage Management Plan (CHMP) and Heritage Interpretation Policy (HIP)**

The required CHMP and HIP were submitted in December 2014. Revised and updated documents were received 30 May 2015 after further review of ongoing concerns.

The final CHMP and HIP dated May 2015 address both Aboriginal and European Cultural Heritage. They are both accepted and recommended for approval as part of this application.

In addition Council has received a letter of support from the Office of Environment and Heritage. The OEH in its letter reviewed the draft report from August 2014 as appropriate and adequate, that it is satisfied with the proposed methodology for future requirements for a



number of necessary AHIPs, and recommends current level of consultation continues throughout the project.

The two documents (CHMP and HIP) were prepared in compliance with required standards and consultation requirements and were updated to incorporate a series of changes in response to the review of and comments provided by the RAPs in December 2014. The applicant has provided a “snapshot summary sheet” documenting these changes. As part of the process an ongoing Aboriginal Advisory Committee has been established for the project with ongoing regular meetings and input. This committee and all registered Aboriginal Parties were supplied with the final copies of the documents.

The final two revised documents dated May 2015 are a result of further consultation to address identified issues.

Through the required consultation the Local Aboriginal community does not fully support the provisions of the CHMP and HIP. Notwithstanding the concerns raised by the local Aboriginal community, the CHP and HIP have been reviewed by both Council and the Office of Environment and Heritage as being adequate and appropriate for the development. The CHMP and HIP adequately consult, identify and assess the impacts of the development on Aboriginal cultural heritage. When implemented, the CHMP and HIP adequately provide for the ongoing management of Aboriginal cultural impacts on the site.

#### Requirements for Future Applications under MP 06 0309, Condition 22

The current application requires dot-points 1, 2 and 3 of Condition 22 regarding Aboriginal and European heritage to be satisfied as follows:

1. Measures of protection and conservation of built heritage items including the sundial and grotto adjoining the foreshore lands have to be detailed.
2. Protection Measures of adequate protected during the works from potential damage for significant built heritage items that are to be detailed. Protection systems must ensure that historic fabric is not damaged or removed.
3. Protection Measures of retained cultural landscape plantings including figs, palms and Norfolk Island Palms located near Bluff Point are required to be detailed.

The details required for meeting dot-points 1,2 and 3 will need to be conditioned as part of this consent, if issued, and need to be submitted to Council for approval.

Dot-point 4 - archival photographic recording of the historic areas of the site - shall also form part of any condition of consent.

#### **Cultural Heritage Managements Plan (CHMP) and Heritage Interpretation Policy (HIP) - Specific Requirements for Stage 1**

##### Construction Plan of Management / Construction Environmental Management Plan

The Cultural Heritage Management procedures outlined in the CHMP and HIP shall be implemented and form part of an approved Construction Management Plan or similar for the overall site and form part of a condition of consent, if issued.

A ‘Skeleton Construction Environmental Management Plan’ (CEMP) dated Sep 2014 was submitted as part of the EIS in the anticipation of forming a “framework plan” incorporation into the Construction and Environmental Management System. It states that the requirements of the CHMP and HIP and any Aboriginal Heritage Impact Permits (AHIPs) would be incorporated.

##### AHIP application

The CHMP and HIP set out specific requirements of the various stages. Aboriginal Heritage Impact Permits are required for the works the subject of this application. Being the first application of the concept approval, the first AHIP application for this stage shall be submitted and supported by the approved CHMP addressing the entire site.

The AHIP application will need to be generally consistent with the CHMP and the Interpretation Policy for the entire site. The AHIP has to be obtained and any resulting management requirements must be implemented prior to release of a Construction Certificate.

### Interpretation Devices

For this Stage 1 application for the Marina and associated works, the supported Heritage Interpretation Policy requires identifying the location opportunities for interpretation devices and general themes, within this part of the site.

The Heritage Interpretation Policy (HIP) provides the overall concept for interpretation of the whole development, not the detail for each component.

Interpretation locations and themes have been identified in the EIS at Appendix F, Landscape Development Application by Terras. Two locations have been identified as follows:

- Raised deck /lookout with interpretative cultural heritage information to the north east of the proposed Marina office;
- and
- Raised deck /lookout with interpretative cultural heritage information to the entry of the shared path of the parking area on the west.

The HIP identifies the boardwalk as a pivotal component of the interpretation of the site. Interpretation panels are to be installed as the boardwalk/pathway is constructed, and when the content for interpretation is finalised, post salvage works.

It is not clear whether the part of the boardwalk/pathway shown on the concept landscape plans for Stage 1 are part of the proposed works for this DA or at a future stage.

The detail design and content of the interpretative cultural heritage devices proposed in the Landscape plan are generally compliant with this Heritage Interpretation Policy and the final details will need to be conditioned to requiring submission to Council prior to the release the Construction Certificate for final review by Council.

To ensure installation of the heritage interpretation devices this condition will be linking the installation to the issue of an interim or final Occupation Certificate.

The above assessment from the Development Planner Heritage Focus is acknowledged and concurred with. Appropriate conditions of consent shall be placed on any consent issued as recommended, from a heritage and aboriginal cultural perspective.

*Clauses 51-56, 59, 60, 62 and 63-105*

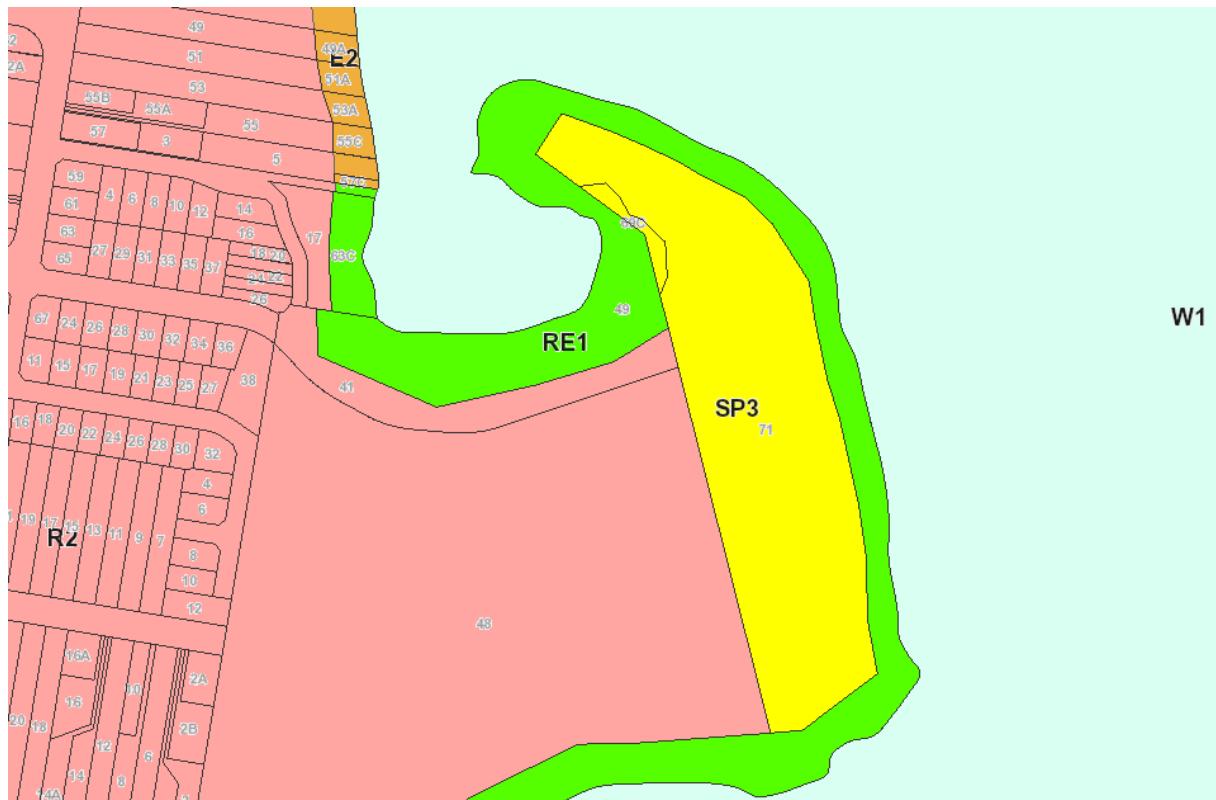
Not applicable.

### **79C(1)(a)(ii) the provisions of any draft EPI**

*Draft Lake Macquarie Local Environmental Plan 2014*

The LMLEP 2014 became operational on 10 October 2014.

Under the draft LMLEP 2014 the land is zoned SP3, RE1 and W1 as follows:



**Figure 7 – Draft LMLEP 2014 land zoning**

The development remains permissible and consistent with the objectives of the zoning of the land under the draft LMLEP 2014.

Similarly, the development remains generally consistent with the relevant provisions of the draft LMLEP 2014.

**79C(1)(a)(iii) the provisions of any Development Control Plan (DCP)**

Development Control Plan No. 1 – Principles of Development

## Section 1.9 – Development Notification Requirements

The designated development application was notified for a minimum of 30 days in accordance with the EPA Regulation 2000 with a letter to affected neighbours, a sign placed on the site, two advertisements in the Newcastle Herald, and exhibition of the EIS at Council offices, the Morisset Library and the Department of Planning and Environment.

The application was also notified to a range of government departments including the Office of Environment and Heritage, Hunter Water Corporation, Department of Planning and Environment, Roads and Maritime Services and Crown Lands.

A total of 127 submissions were received from the public, mostly objecting to the proposal. A summary of all submissions and government agency responses may be found at section 79C(1)(d) of this report, and Appendix D of this report.

## Section 2.1 – Environmental Responsibility and Land Capability

### 2.1.1 Ecological Values

Council's Development Planner Flora and Flora provides the following advice.

Where required the application has been assessed for compliance with ecological requirements / recommendations detailed in the LMCC LEP (2004 and 2014), LM DCP 1, TSC Act 1995, Native Vegetation Act 2003, Lake Macquarie Flora and Fauna Survey Guideline (2012), Lake Macquarie Vegetation Management Plan Guideline (2012), Lake

Macquarie *Tetratheca juncea* Planning and Management Guidelines (2014), Interim Lake Macquarie Large Forest Owl Planning and Management Guidelines (2014), Interim Lake Macquarie *Grevillea parviflora* subsp. *parviflora* Planning and Management Guidelines (2013), Lake Macquarie Wetlands Management Study, Lake Macquarie Coastal Management Plan, SEPP 14, 19, 26 & 44, FM Act 1994 and EPBC Act 1999.

### Terrestrial Ecology

The construction of a shared pathway will result in clearing approximately 46 m<sup>2</sup> of swamp oak floodplain forest, listed as an endangered ecological community on the TSC Act (RPS September 2014). It is agreed that this clearing is unlikely to result in a significant impact on this endangered ecological community and an SIS is not required.

The retention of all other existing native foreshore vegetation (as per Site Plan by Terras September 2014) is supported, and demonstrates compliance with the aims and objectives of SEPP 19 Bushland in Urban Areas, which is applicable to the site as it occurs adjacent to land zoned 6(1) Public Open Space.

However, there is a need for water sensitive urban design to minimise freshwater runoff and other potential indirect impacts onto adjacent saltmarsh, mangroves, and swamp oak vegetation communities. Note that saltmarsh is listed as a threatened ecological community on the TSC Act and EPBC Act, mangroves are protected marine vegetation on the FM Act, and swamp oak is a threatened ecological community on the TSC Act.

The Lake Macquarie Flora and Fauna Survey Guidelines Version 4.2 (2012) outlines a 20 m buffer is required from development to significant vegetation (such as threatened ecological communities). The proposed buffers to threatened ecological communities are substandard however the long term maintenance of these threatened communities at the subject site can be achieved through implementation of the submitted Vegetation Management Plan.

The Native Vegetation Act applies to the site. It is recommended the applicant contact the Local Land Services to ensure all appropriate approvals are gained prior to clearing of native vegetation.

The application is unlikely to have a significant impact to threatened biota as per Section 5A of the EPA Act or EPBC Act. Threatened species known to occur in the area include *Tetratheca juncea*, the squirrel glider and a number of microbats and birds. Habitat proposed to be developed was considered too disturbed to be suitable for *Tetratheca juncea*. Habitat for the squirrel glider, microbats and birds that is to be impacted was considered unsuitable due to the lack of native vegetation and important fauna habitat features such as hollow-bearing trees, with native vegetation and fauna habitat of higher quality to be conserved within adjacent 6(1) zone.

The application will not impact on native vegetation and riparian corridors as mapped by Councils Native Vegetation and Corridors Map (2011).

The application is compliant with other ecological requirements detailed in the LMLEP and ecological SEPPs such as SEPP 44.

### Vegetation Management Plan

The VMP refers to and includes relevant information from the LMCC Vegetation Management Plan Guideline (2012), including the ecological context of the site, weed management within the vegetation management area (VMA), revegetation of a small area (48m<sup>2</sup>) of swamp oak forest to compensate for the clearing (46 m<sup>2</sup>) associated with the shared pathway, maintenance, monitoring and reporting requirements.

This VMP has been written to enable updating on an application by application basis as required for the overall Trinity Point Development. It is recommended that this VMP be updated to include the proposed Seagrass Bed Integrity Monitoring and Wrack Movement Monitoring (as recommended by Marine Pollution Research within the Aquatic Ecology Investigation Report). Further updates to the VMP will likely be required in the future to expand either the vegetation management actions within the existing VMA area and/or to

expand the area subject to vegetation management for other parts of Lot 32, as development applications progress and interact with the Council reserve and existing vegetated lands.

### Aquatic Ecology

The aquatic impact assessment relies on the previous RPS (2008) and TEL (2008) likelihood of occurrence and likelihood of impact on threatened aquatic species, including turtles and Syngnathiformes. It is agreed that the application is unlikely to have a significant impact to threatened biota listed on the FM Act or EPBC Act.

There will be a small amount of seagrass ( $0.6\text{m}^2$ ) lost directly around piles and potential for further loss of seagrass due to indirect impacts such as shading from moored boats, construction related runoff, stormwater runoff contaminated with excessive sediments that could smother adjacent intertidal habitats and cause excessive turbidity, changes to nutrient loads and water quality and scour from the stormwater outlet. The use of mesh decking to allow direct sunlight penetration to seagrass is supported and should result in less seagrass loss due to shading. The assessment that the proposal can be managed to minimise the risk of damage to marine vegetation is agreed with, and the proposed Seagrass Bed Integrity Monitoring (Section 3.6.1) and Wrack Movement Monitoring (Section 3.6.2) are supported.

The application states that the amount of direct seagrass loss is very small ( $0.6\text{m}^2$ ), and residual risk of seagrass loss due to construction and operational activities is low, and therefore a permit to harm marine vegetation under the Fisheries Management Act would probably not be required. It is recommended the applicant consult with Department of Primary Industries (Fisheries) to confirm this, and this can be imposed as a condition of consent, if issued.

It is also recommended that the VMP be updated to include the proposed Seagrass Bed Integrity Monitoring and Wrack Movement Monitoring (as recommended by Marine Pollution Research within the Aquatic Ecology Investigation Report).

There exists a community of salt marsh adjacent to the development site. The proximity and impact of the development on this community was considered by the PAC in its determination of the Concept Approval – MOD 2.

#### 2.1.2 Ecological Corridors

The development does not directly impact on ecological corridors.

#### 2.1.3 Scenic Values

##### Visual Impact

Council's Landscape Architect has reviewed the Visual Impact Assessment prepared by RLA dated September 2014 and raises no major concerns. The VIA has been reviewed against the guidelines for new development as per LMCC Scenic Management Guidelines (SMG) 2013.

The marina component of the development has been repositioned slightly from the current approval design and is considered to be an improved outcome. The marina will of course be visible from both private and public places, and the lake itself.

The impact of the marina as an introduced element in the landscape, where no built form exists, has been assessed against the Concept Approval and it is concluded that it is an element that has been endorsed through the concept approval stages and as such can be expected to be erected in the manner proposed.

The main consideration pertaining to the visual impact of the land based component of the application is the retention of vegetation to the site's western tip abutting Bardens Bay to the west and Lake Macquarie to the north. The retention of the existing perimeter/buffer vegetation including salt marsh and Melaleuca Forest zones which has been addressed as part of the Vegetation Management Plan is critical in terms of the proposed development conforming to the objectives and guidelines of the SMG 2013.

The development footprint including car park area appears to be designed to reduce the impact on vegetation and it is critical that all vegetation within the perimeter buffer shall remain as a visual mitigation measure for future built form on the site.

It is acknowledged that whilst there will be a change to the existing landscape visual setting of the site the retention of the buffer vegetation as a partial screen providing fragmentation of future built form on the site is a necessary design outcome. The retention of existing vegetation to the site's foreshore perimeter is a critical design consideration.

### Landscaping

Retention of vegetation to the foreshore edge in accordance with AS4970-2009 'Tree Protection on Development Sites' is a specific design consideration as justified in the VIA.

A key point in assessing the landscape and visual impact of the proposal was understanding the entire vacant parcels (Concept Approval) connectivity and permeability for both universal access and pedestrian movement. As noted and having regard to the concept approval as modified, access and connectivity for the entire parcels should form a basis as part of any site analysis and urban design understanding. It is acknowledged that a number of separate development applications form part of the process for the development of the entire vacant land parcel and understanding the logic and placement of built form and open space needs to be made clear.

In light of the above comment, concern was expressed regarding the location of the 2.5m shared pathway abutting the south western foreshore edge.

The design and location of this boardwalk feature was then amended through revised D landscape plans from Terras Landscape Architects. The siting and design of this access pathway is generally acceptable.

#### 2.1.4 Tree Preservation and Management

Please refer to comments at clause 34 of this report.

#### 2.1.5 Bushfire Risk

The land is bushfire prone. For the bushfire assessment of this application please refer to clause 33 above.

#### 2.1.6 Water Bodies, Waterways and Wetlands

The site is affected by lake flooding and projected sea level rise.

The commercial buildings, as shown on the submitted plans, comply with the requirement to build floors and all unsealed electrical installations at or above 2.36mAHD.

The specification in Table 8.2 Appendix J, for the marina piles to extend to 2.36m AHD, meets the general guideline that new structures should be able to function safely up to the 1:100year flood level, plus 0.5m freeboard, plus an allowance for projected sea level rise over the life of the asset (25-30 years).

The swales and bioretention basins that transmit and treat stormwater before it is released into the lake are designed to operate under current hydrological conditions. However, with a rise of up to 0.4 metres in lake levels predicted over the nominal life of the marina assets, their operation will be compromised by rising groundwater levels and inundation of the discharge pipes. The geotechnical report shows groundwater levels beneath the bioretention basins are already at or slightly above the current average lake level of 0.1mAHD.

To improve the operation of the stormwater treatment system, especially as lake and groundwater levels rise, additional treatment should be provided by including an engineered filter media and drainage layer, combined with pervious paving, in the car park area and roadways, particularly along the verges. The exact area and location of such treatment is difficult to specify, but the aim should be to provide such treatment at least in all the parking and road verge areas, as distinct from the actual roadways.

The proposed underground fuel storage tank will, in effect, be permanently immersed in groundwater, creating issues of buoyancy and with containing leaks. As proposed, the tank will comply with the required Australian Standards for a Class A site, requiring equipment level 1. When preparing and submitting the detailed design for the installation and operation of the fuel tank, the design needs to ensure the buoyancy calculations allow for an increase in groundwater level of at least 0.4metres, and for lake flood levels that may reach 1.86 metres AHD.

The actual marina is constructed at grade, and the associated facilities such as the car park at a level that allows practical access to the marina. This means these associated facilities (other than the commercial buildings) are below current 1:100 year flood levels, and will become increasingly exposed to lake flooding as average lake levels rise. The surrounding residential and tourist accommodation is built to comply with flood thresholds that allow for up to an 0.9metre increase in lake levels, so the marina and associated assets may need to be further modified or relocated in future to accommodate rising lake levels at some time during life of the larger development. This not the subject of the current application, but may affect decisions about the detailed design and level of investment in assets that could be subject to future reconstruction or relocation.

The proposed development is located adjacent to Lake Macquarie. The stormwater management plan prepared by Royal Haskoning has incorporated biofiltration swales and a basin, which will limit any likely adverse effects on water quality in the lake. It is therefore considered that the development as proposed will have no significant adverse impacts on Lake Macquarie. The issue of requiring a more detailed plan of the stormwater treatment system shall be included as a condition of consent, if consent is issued.

#### 2.1.7 Flood Management

The impacts of flooding on the land based components of the site have been considered. The carpark to the marina shall be erected at 1.23 metres AHD. The remaining floor levels of the marina building are consistent with the flood level for non-habitable buildings in Lake Macquarie.

#### 2.1.8 Development on Flood Prone Land at Dora Creek

Not applicable.

#### 2.1.9 Sloping Land and Soils

The site was not identified as being within a geotechnical zone on Council's Geotechnical Maps, as such further geotechnical investigation is not required.

#### 2.1.10 Acid Sulfate Soils

An acid sulphate soils assessment report by Douglas Partners is provided at Appendix P of the EIS. The development site has been identified as containing Class 2 Acid Sulphate Soils.

Conditions of consent shall require the preparation of an ASS Management Plan, implementation of the plan, monitoring and certification by the geotechnical engineer.

#### 2.1.11 Erosion Prevention and Sediment Control

Council's Erosion and Sedimentation Officer has reviewed the information contained within the EIS and is satisfied that the plans prepared by Royal Haskoning DHV will prevent pollution, however these plans require additional information in a detailed sense at construction stage to ensure a high level of performance. Conditions of consent will be imposed on any consent issued, to this effect.

#### 2.1.12 Mine Subsidence

The Concept Approval provides for a specific condition regarding Mine Subsidence, that shall be placed on any consent issued:

- 1 *Prior to the commencement of detailed design, the Proponent must submit a Mine Subsidence Impact Statement (MSIS) to the satisfaction of the Mine Subsidence Board (MSB), which demonstrates how the impact of mine subsidence will be managed. The MSIS shall identify:*
  - (a) *mine subsidence design parameters adopted;*
  - (b) *the main building elements and finishes*
  - (c) *the outcomes of a mine subsidence risk assessment of building elements;*
  - (d) *mine subsidence mitigation measures proposed for each building element; and*
  - (e) *comment on the sensitivity of the design to greater levels of mine subsidence.*
- 2 *The Proponent shall ensure that on the completion of any structural works, certification by a qualified structural engineer is forwarded to the MSB, that all improvements have been constructed in accordance with plans approved by the MSB.*
- 3 *Development shall be designed for the following mine subsidence parameters:*
  - (a) *Development on land below RL 2.0 AHD:*
    - (i) *maximum vertical subsidence = 50 mm;*
    - (ii) *maximum ground strains = +/- 1 mm/m;*
    - (iii) *maximum tilt = 1 mm/m; and*
    - (iv) *maximum radius of curvature – 10 km*
  - (b) *Development on land above RL 2.0 AHD:*
    - (i) *maximum vertical subsidence = 150 mm;*
    - (ii) *maximum ground strains = +/- 2 mm/m;*
    - (iii) *maximum tilt = 2 mm/m; and*
    - (iv) *maximum radius of curvature – 5 km*
  - (c) *Development over the water including the marina:*
    - (i) *maximum vertical subsidence = 400 mm;*
    - (ii) *maximum ground strains = +/- 4 mm/m;*
    - (iii) *maximum tilt = 7 mm/m; and*
    - (iv) *maximum radius of curvature – 2.5 km.*

#### 2.1.13 Contaminated Land

There are no known sources of contamination on the site.

One 20,000 litre diesel underground storage tank and one 10,000 litre underground petrol storage tank are proposed.

The EIS includes at Appendix AD an analysis of the proposal against the provision of SEPP 33.

The combined storage is classed as 3PG II. Table 9 of SEPP 33 requires a setback of 3 metres to 'other uses' and 4 metres to 'sensitive users'.

The proposal complies with these setbacks and as such the materials and development is not considered to be potentially hazardous.

#### 2.1.14 Energy Efficiency

The marina and associated building design are not inconsistent with an energy efficient approach to the development.

#### 2.1.15 Noise and Vibration

The application has been reviewed by Council's Environmental Health Officer and Principal Environmental Health Officer.



## Noise

The following reports have been reviewed:

Acoustical Criteria- Trinity Point Marina and Mixed Use Development prepared by The Acoustic Group dated 22 August 2014.

Marina Acoustical Assessment – prepared by The Acoustic Group dated 17 September 2014.

The Marina Acoustical assessment identifies the main noise source from the fuel, sewage and water pumps associated with the marina. Acoustic shielding of the pumps has been recommended.

Council supports the recommendation for a noise management plan. Standard conditions of consent relating to an acoustic audit, noise levels and a noise management plan shall be imposed on any consent, if issued.

## Contamination issues

It is accepted that the use of hydrocarbon absorbent pads in bilges is an industry accepted practice, together with a recommendation that oil/fuel drip trays should be installed under engines.

Other similar facilities in recent years approved in Lake Macquarie have not required bilge pump out facilities.

The responsibility to manage and maintain the integrity of waters in and around the marina has joint responsibility of boat owners and marina management.

In this regard, in lieu of the bilge pump out facility, the marina management must include bilge auditing and management within their environmental management plan.

This may require inspection by marina management staff of vessel bilges to ensure that owners have required hydrocarbon pads, and are aware of their responsibilities for “good housekeeping on board”.

As the boat repair facilities have been excluded from the current plans, a bilge pump out facility can therefore be excluded, providing that the above is considered and implemented.

In any case, the marina will be regulated and must comply with the provisions of the NSW POEO Act and regulations, and if environmental pollution incidents regularly occur from its operation, clean up, prevention notices or and/or penalties maybe issued.

Underground petroleum storage shall comply with *Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2014* and be installed according to the associated EPA guidelines. All underground petroleum storage units are currently regulated and monitored by the EPA.

The Marina is a scheduled activity as per the *Protection of the Environment Operations Act 1997* scheduled activities, as the activity has the capacity to handle more than 80 vessels at any time for boat mooring. Therefore as a scheduled activity the Marina and all environmental related activity will be monitored and regulated by the EPA.

### 2.1.16 Air Quality and Odour

Air quality and odour are not expected to be adversely impacted as a result of the construction or ongoing operation of the marina and associated buildings.

### 2.1.17 Building Waste Management

Given the scale of the built form of development a standard condition of consent shall be imposed requiring the management of building waste to be in accordance with the provisions of Development Control Plan No.1.

## Section 2.2 – Social Impact

### 2.2.1 Social Impact Assessment

The social impact of the development is considered in the light of the concept approval and the information contained in the EIS.

The objective of the zoning of the land is to provide for tourism uses and the development achieves this objective. Whilst the community objections to the development are acknowledged and considered in this report, the pursuit of the objectives of the tourism zoning of the land from a social planning perspective in this instance is considered to be positive.

## Section 2.3 – Economic Impact

### 2.3.1 Economic Impact Assessment

If successful the development should increase the level of economic activity in the local government area as it applies to tourism developments, without significantly impacting on other economic contributors to the local economy such as retail, wholesale, industry or commercial enterprises.

## Section 2.4 – Heritage

### 2.4.1 European Heritage Items

Please refer to comments and clause 50 – LMLEP 2004, of this report.

### 2.4.2 Catherine Hill Bay Heritage Conservation Area

Not applicable.

### 2.4.3 Aboriginal Heritage Items and Sites

Please refer to comments and clause 50 – LMLEP 2004, of this report.

### 2.4.4 Natural Heritage Items

Not applicable.

## Section 2.5 – Stormwater Management, Infrastructure and On-site Services

### 2.5.1 Essential Infrastructure

The development includes plans and documentation indicating the appropriate level of provision of stormwater infrastructure and on site servicing to cater for the development.

### 2.5.2 On-Site Wastewater Treatment

Not applicable.

### 2.5.3 Stormwater Management (Drainage System Design)

A suitable Stormwater Management Plan by Royal Haskoning, Reference 8A0379, incorporating water harvesting and water quality facilities in accordance with Lake Macquarie DCP No.1 has been provided. The plan is considered adequate for DA purposes.

The floor levels for the proposed buildings and the car park levels satisfy the requirements of Council's Sea Level Rise Policy and are satisfactory.

### 2.5.4 On-Site Stormwater Harvesting (Source Controls)

Not applicable.

### 2.5.5 Waste Management for Multi-Unit Dwellings

Not applicable.

## Section 2.6 – Transport, Parking, Access and Servicing

### 2.6.1 Movement System

Not applicable.

### 2.6.2 Traffic Generating Development

The RTA Guide to Traffic Generating Developments defines a Total Vehicle Trip for a Marina, but does not indicate the Peak Vehicle Trips. The TVT's are 2.7 per fixed berth, with the Marina proposing 94 berths. The casual boat parking is not considered to generate vehicle traffic as patrons would be arriving and departing from the site by boat.

The TVT's for the Marina are 254 vehicles per day. The peak hour is generally 10% of the daily peak, so it can be considered that around 25 vehicle trips will occur in the PM peak.

The Traffic report states that the concept approval adopted 0.25 trips per berth in the PM peak, resulting in 24 vehicle trips. This is consistent with the RTA guide, so it is considered that the PVT's for this stage of the development is accurate at 24 trips.

### 2.6.3 Road Design

*Trinity Point Drive* – for this development, it is considered that the majority of the generated traffic will be using Trinity Point Drive to access the Marina as it is the most direct route. There are several Development Applications approved, lodged and anticipated to be lodged for the whole site. The cumulative impact of these developments will be assessed to ensure that the immediate surrounding roads are appropriately constructed and designed to carry the additional traffic, as will the road network from this site to Macquarie Street (Main Road 217).

Trinity Point Drive is a local street, measuring approximately 10.7 metres between kerbs, and narrows at Lakeview Road to approximately 6.7 on the west side and 6.1 on the east side. The trees in the road pavement on Trinity Point Drive between Lakeview Road and Edgewater Drive narrow the width of the carriageway to approximately 5 metres.

For this application, the extra 254 trips per day, and 24 trips in the peak hour will have a less impact on Trinity Point Drive and Morisset Park Road than the subsequent / other applications for this site. The impact of this development will be added to the impact for the next application on this site to be reviewed (DA/1731/2014) to determine if any alterations are warranted.

#### *Morisset Park Road at Fishery Point Road intersection*

Identified in the S94 plan for Morisset catchment for upgrade with CHR (Channelised Right) turn lane from Morisset Park Road into Fishery Point Road.

#### *Fishery Point Road at Macquarie Street (MR217) intersection*

The RMS will be reviewing this application and the impact that is created on the existing intersection of Fishery Point Road and Macquarie Street.

New access roads to the development will be constructed as a part of the adjacent Trinity Point subdivision works, with particular importance placed upon the local roundabout on Trinity Point Drive to provide access to the development. This roundabout and the existing local infrastructure provides adequate access to the marina development at this stage of its progression (i.e. without consideration of the larger residential component of the Concept Approval at this stage).

### 2.6.4 Pedestrian and Cycle Paths

The pedestrian paths internal to this site are adequate, and will connect with pedestrian paths in subsequent applications for this site.

### 2.6.5 Public Transport

The public transport bus route number 279 travels along Lakeview Road and Trinity Point Drive, with the nearest bus stop being located approximately 700 metres from the Marina.

The traffic report states that 'the on-going development of the adjacent residential development and the associated extension of Trinity Point Drive allows for the extension to the existing bus route.' It continues in stating that 'a tourist bus set down / pick up will be available through a layover being provided along Trinity Point Drive associated with future land use applications.'

For a local street with a bus route, the minimum width is to be 9 metres between kerbs. It is suggested that the route would be via Trinity Point Drive (left off Lakeview Street) and to Morisset Park Road via Henry and Charles Roads, and in the opposite direction.

Currently none of these roads (Trinity Point Drive due to kerb extensions and trees, Henry Road, Charles Road) allows for the width of a bus route and parking, and this single application for a Marina would not warrant the public bus route to be altered. Additionally it would be unlikely that a bus could turn left into Trinity Point Drive at Lakeview Road with the kerb extensions that have been installed, and alterations may be required if the bus route is altered into Trinity Point. The subdivision and future residential intensification of the site may warrant a public bus route alteration. This will be addressed in future applications, and discussions will be held with the bus service provider for the west side of the lake (Hunter Valley Buses) to determine the most appropriate route.

### 2.6.6 Vehicle Parking Provision

It is proposed to erect 47 car parking spaces, and a separate 5 space car park with two disabled spaces compliant with AS2890.6.

The proposal is for a 94 space wet berth Marina. The approved rate as part of the concept plan is 0.3 spaces per wet berth, which will require 28.2 parking spaces. The parking rate for Marina staff (5 staff anticipated) is 0.5 spaces per staff member, requiring 2.5 spaces. In total, the Marina generates the need for 30.7 ~ 31 parking spaces. The Marina car park accommodates a total of 53 spaces, resulting in a 16 space surplus. It is noted that this surplus of parking will be used for future / other applications on this site.

### 2.6.7 Car Parking Areas and Structures

The disabled parking spaces at the Marina Lounge appear to provide a compliant path of travel for disabled persons. The proposed internal car parking arrangements appear to conform with AS2890.1.

The internal driveway and car parking area (including turning movements) for the development appear adequate for the development and comply with DCP 1 requirements and AS 2890.1.

### 2.6.8 Vehicle Access

The proposed road into the site from the approved but not yet constructed Trinity Point Drive is adequate to support the Marina development. It is noted that a local street roundabout is proposed where this access intersects with Trinity Point Drive. This roundabout is to be designed to accommodate the manoeuvrability of tourist buses, which are 14.0 metres in length.

The proposed access and sight distances to the proposed development from Trinity Point Drive are considered adequate.

### 2.6.9 Access to Bushfire Risk Areas

See comment at clause 33 of this report.

#### 2.6.10 Servicing Areas

The service area is indicated to be provided in subsequent applications as a part of the overall site. In the interim, it is considered adequate that the servicing can be undertaken from the widened section of the access road into the site, located behind the car park at the Marina Lounge. This area will allow servicing for the Marina for the case where it is to operate independently.

#### 2.6.11 On-Site Bicycle Facilities

It is considered that a small number of bike racks should be provided to cater for those who ride to the site. It is possible that these could be located adjacent to the Marina Lounge car park, or any other location considered appropriate by the applicant.

#### 2.6.12 Non-Discriminatory Access and Use

The applicant shall provide details of the following at Construction Certificate stage.

- The designated accessible parking bays to comply with AS 2890.6.
- A continuous path of travel from the parking area to building entrance and the boardwalk to comply with AS 1428.1.
- Doorway widths and circulation space to comply with AS 1428.1.
- The placement of tactile ground surface indicators at stairs, ramp and car park entry to comply with AS 1428.1.
- Seating located at viewing platform to comply with AS 1428.2.
- Unisex accessible shower facilities, accessible toilet facilities and ambulant toilet facilities to comply with AS 1428.1.

The above shall be imposed as a condition of consent, if issued.

### **Section 2.7 – Streetscape and the Public Realm**

#### 2.7.1 - 2.7.4

See comment at the Visual Impact Assessment section of this report.

#### 2.7.5 Light, Glare and Reflection

Lighting of the marina will be required for safety, operational and navigation requirements. A standard condition of any consent shall require no interference with the amenity of the surrounding environment by reason of light glare.

#### 2.7.6 Views

See comment at the Visual Impact assessment section of this report.

#### 2.7.7 - 2.7.8

Not applicable.

#### 2.7.9 Safety and Security

The design, siting and management of the marina and associated land based building does not raise any significant issue with regard to safety, security and crime prevention.

### **Section 3.1 - Lake, Waterway and Coastline Development**

#### 3.1.1 - 3.1.2

See comment at section 2.1.6 of this report.

Not applicable.

Not applicable.

**79C(1)(a)(iia) any planning agreement that has been entered into or any draft planning agreement that the developer has offered to enter into**

Not applicable.

**79C(1)(a)(iv) any matters prescribed by the regulations**

Clause 92 of the Environmental Planning and Assessment Regulation 2000 provides:

(1) *For the purposes of section 79C(1)(a)(iv) of the Act, the following matters are prescribed as matters to be taken into consideration by a consent authority in determining a development application:*

(a) *in the case of a development application for the carrying out of development:*

- (i) *in a local government area referred to in the Table to this clause, and*
- (ii) *on land to which the Government Coastal Policy applies,*

*the provisions of that Policy,*

(2) *In this clause:*

**Government Coastal Policy** means the publication entitled NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast, as published by the Government (and including any maps accompanying that publication and any amendments to those maps that are publicly notified), a copy of which may be inspected during ordinary office hours:

(a) *at any of the offices of the Department, or*

(b) *at the offices of any of the councils of the local government areas listed in the Table to this clause.*

**Table**

Ballina	Manly*
Bega Valley	Nambucca
Bellingen	Newcastle*
Byron	Pittwater*
Coffs Harbour	Port Stephens
Copmanhurst	Pristine Waters
Eurobodalla	Randwick*
Gosford*	Richmond Valley
Great Lakes	Shellharbour*
Greater Taree	Shoalhaven
Hastings	Sutherland*
Kempsey	Tweed
Kiama	Warringah*
Lake Macquarie*	Waverley*
Lismore	Wollongong*
Macleay	Woollahra*
Maitland	Wyong*

**Note.**

*The areas marked with asterisks are only affected by the seaward part of the Government Coastal Policy, being the area extending 3 nautical miles seaward from the open coast high water mark.*

The provisions of the Government Coastal Policy as they relate to the development have been reviewed. The marina and associated works have been assessed against the goals of the Policy. The information contained in the EIS and Appendices indicates that the impact of the marina is acceptable and that the development is not inconsistent with the Policy goals.

#### **79C(1)(b) the likely impacts of the development**

The following matters were considered and, where applicable, have been addressed elsewhere in this report.

Context & Setting	Waste
Access, transport & traffic	Energy
Public domain	Noise & vibration
Utilities	Natural hazards
Heritage	Technological hazards
Other land resources	Safety, security & crime prevention
Water	Social impact on the locality
Soils	Economic impact on the locality
Air & microclimate	Site design & internal design
Flora & fauna	Construction

#### **79C(1)(c) the suitability of the site for development**

##### **Does the proposal fit the locality?**

The proposal is suited to the locality.

##### **Are the site attributes conducive to development?**

The site attributes are conducive to the development.

#### **79C(1)(d) any submissions made in accordance with this Act or the Regulations?**

##### **Public submissions:**

As noted previously the designated development application was notified for a minimum of 30 days in accordance with the EPA Regulation 2000 with a letter to affected neighbours, a sign placed on the site, two advertisements in the Newcastle Herald, and exhibition of the EIS at Council offices, the Morisset Library and the Department of Planning and Environment.

A total of 127 submissions were received from the public, mostly objecting to the proposal. A summary of all public submissions is contained in Appendix D of this report.

The public submissions varied in their objection to the development ranging from environmental concerns on lake health and water quality, acoustic impact, traffic impact, vegetation impact, visual impact, and impact on existing boat users of the lake, to concerns regarding the planning assessment process complexity, inconsistencies between the development application and the Concept Approval, and a general objection to the scale and siting of the facility and its promotion.

The environmental impacts raised by the community have been addressed in detail through this environmental assessment. All issues raised by the community have been confirmed as being acceptable against the relevant planning guidelines, and where required, additional protection is imposed through specific conditions of consent.

The objections and comment of the community with regard to the complexity of the planning process is acknowledged. The circumstance is in some ways exacerbated by the introduction and then repeal of Part 3A of the Act, and the requirement for the application to

be firstly notified and assessed as a 'concept', and secondly to be notified and assessed as a designated development application.

Compounding this complexity is the modification of the concept approval, and the lodgement of a number of development applications under the one concept approval, once modified.

It is confirmed that all required processes and procedures for the appropriate assessment of the application both as a concept and development application have been complied with by the applicant to date. The development application the subject of this report is consistent with the latest modification of the Concept Approval 06\_0309 MOD 2.

To assist the community in navigating a way through the complexity of the assessment process the applicant provides an overall summary of the development as Appendix E to this report.

#### **Submissions from public authorities:**

##### **NSW Trade and Investment - Crown Lands - 9 October 2014:**

- The EIS identifies the presence of seagrass beds within the project area. The construction of jetties in such locations generally requires approval under the *Fisheries Management Act 1994*. No approval requirements have been identified within the EIS and consequently the proponent should seek written confirmation from NSW Fisheries regarding the requirement, or otherwise, for any approvals under the *Fisheries Management Act 1994*.
- Approval under Section 13T of the *Maritime Services Act 1935* may be required for the construction of the jetty / marina piles and navigational markers. Confirmation from NSW Roads and Maritime Services should be provided regarding any relevant approvals required under the *Maritime Services Act 1935*.
- The EIS identifies that dredging is not required for the construction or maintenance of the proposed marina. The proposal does not adequately consider the draft depth of vessels that may access the marina in relation to the water depth adjacent to other navigable areas of Lake Macquarie, such as surrounding other marine infrastructure and the Swansea channel. Any future proposals for dredging within Lake Macquarie, that require approval from Crown Lands, will be assessed on environmental, social and economic factors and Crown Lands cannot guarantee approval of any such future dredging proposals.
- Irrespective of any development consent, or any approval given by other public authorities, work or occupation of Crown land cannot commence without a current tenure from the NSW Trade & Investment, Crown Lands, authorising such work or occupation.
- Subject to development consent being issued, a lease application for work and occupation of structures located on Crown Land will be required to be submitted to Crown Lands by Johnson Property Group Pty Ltd. Following the submission of a lease application, a draft lease agreement with appropriate special conditions will be prepared.

The Crown comments are noted. Conditions shall be imposed on any consent issued requiring adherence to the above requirement of the first, second, fourth and fifth dot points.

With regard to the third dot point, dredging shall not be approved under this application.

##### **Office of Environment and Heritage - 15 October 2014**



From an Aboriginal cultural heritage perspective, OEH has reviewed the reports; *'Trinity Point Marina and Mixed Use Development Cultural Heritage Management Plan, Prepared for Johnson Property Group, prepared by Insite Heritage, August 2014'* and *'Heritage Interpretation Policy, Trinity Point Marina and Mixed Use Development, Trinity Point, Morisset Peninsula NSW, Report to Johnson Property Group, prepared by Insite Heritage, August 2014'* and makes the following comments:

- OEH is satisfied that both the Cultural Heritage Management Plan and the Heritage Interpretation Policy are appropriate and adequate to manage the Aboriginal cultural heritage values associated with the proposed Trinity Point Marina site.
- OEH concurs that there will be a requirement for a number of Aboriginal Heritage Impact Permits (AHIP'S) for the various stages of the development and is satisfied that the proposed salvage methodology will ensure that the long and complex Aboriginal association with the landscape is well documented.
- OEH strongly recommends that all current level of the consultation with the local Aboriginal community be maintained throughout the life of the project.

The OEH comments are noted.

### **Roads and Maritime Services - 3 March 2015**

Roads and Maritime has reviewed the information referred by Council and has no objection to the subject development application with regards to road and traffic impacts as it is considered that as the development relates primarily to restaging the construction of the marina it will have no significant impact on the classified (State) road network.

The RMS comments are noted.

### **79C(1)(e) the public interest**

The provisions of the following Acts and Regulations have been considered in this assessment. The development application is consistent with the relevant provisions of these Acts and Regulations.

- Threatened Species Conservation Act 1974
- Coastal Protection Act 1979
- NSW National Parks and Wildlife Act 1974
- Protection of the Environment Operations Act 1997
- Water Management Act 2000
- Water Act 1912
- Fisheries Management Act 1994
- Crown Lands Act 1989

### **Conclusion:**

Based on the above assessment it is concluded that designated development application DA/1503/2014 for a Marina and associated building, car parking, landscaping and stormwater infrastructure is consistent with the Concept Approval 06\_0309 MOD 2. Subject to the imposition of appropriate conditions, impacts on the environment are able to be mitigated and it is therefore considered the marina development can proceed.

### **Recommendation:**

That the application be approved, subject to conditions contained in Appendix D to this report.

Chris Dwyer  
**Principal Development Planner**  
**Lake Macquarie City Council**

## **Appendix A – Original Concept Approval 06\_0309**

## Concept Approval

### Section 75O of the *Environmental Planning and Assessment Act 1979*

I, the Minister for Planning, pursuant to Part 3A of the *Environmental Planning & Assessment Act 1979*, determine:

- a. Under Section 75O of the *Environmental Planning & Assessment Act 1979*, to approve the concept plan referred to in Schedule 1 subject to the modifications in Schedule 2;
- b. Under Section 75P(1)(a) of the *Environmental Planning & Assessment Act 1979*, that future applications for the marina (including the marina buildings and associated structures) be subject to Part 3A of the Act;
- c. Under Section 75P(1)(b) of the *Environmental Planning & Assessment Act 1979*, that future applications for all land based development (except marina buildings and associated structures) in association with the concept plan be subject to Part 4 of the Act;
- d. Under Section 75P(1)(a) of the *Environmental Planning & Assessment Act 1979*, that future environmental assessment requirements for subsequent applications associated with the concept plan be subject to the requirements set out in Schedule 2 and the proponent's Statement of Commitments in Schedule 3.

The conditions are required to:

- Adequately mitigate the potential environmental and visual impact of the marina;
- Ensure the design of future buildings is a high standard and quality;
- Ensure the proposed development is a bona fide tourist facility;
- Ensure suitable public access to the foreshore and the lake;
- Protect existing riparian vegetation and ensure an appropriate offset is provided and conserved for the loss of EEC;
- Ensure protection and conservation of aboriginal and european heritage items and values;
- Minimise the impact on the amenity of the local area; and
- Encourage the orderly future development of the site

  
The Hon Kristina Keneally MP  
Minister for Planning

Sydney, 5 Sept. 2009

## SCHEDULE 1

### PART A—TABLE

Application made by:	Johnson Property Group
Application made to:	Minister for Planning
Project Application:	06_0309
On land comprising:	Lot 31 DP 1117408, Pt Lot 32, DP 1117408, Pt Lot 33 DP1117408, and Pt Crown Land (the lake)
Local Government Area	Lake Macquarie City Council
For the carrying out of:	<ul style="list-style-type: none"><li>• 188 berth marina and associated maintenance and club facilities;</li><li>• 150 accommodation units (75 tourist and 75 residential);</li><li>• restaurant, café, function centre, shops and office;</li><li>• parking, landscaping and boardwalk.</li></ul>
Type of development:	Major Project
Determination made on:	
Date approval is liable to lapse:	Five years from the date of determination unless works have physically commenced in accordance with Section 75Y of the Act.

### PART B—NOTES RELATING TO THE DETERMINATION OF CONCEPT PLAN APPLICATION 06\_0309

#### ***Responsibility for other consents / agreements***

The Proponent is solely responsible for ensuring that all additional approvals, consents and agreements are obtained from other authorities, as relevant.

#### ***Appeals***

The Proponent has the right to appeal to the Land and Environment Court in the manner set out in the *Environmental Planning and Assessment Act, 1979* and the *Environmental Planning and Assessment Regulation, 2000* (as amended).

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## PART C—DEFINITIONS

In this approval,

**Act** means the *Environmental Planning and Assessment Act 1979*.

**Building height** (or **height of building**) means the vertical distance between ground level (existing) at any point to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

**Council** means Lake Macquarie City Council.

**CPI** means Consumer Price Index.

**Department** means the Department of Planning or its successors.

**Director-General** means the Director-General of the Department.

**Environmental Assessment** means the *Concept Plan Application for Trinity Point Marina and Mixed Use Resort*, prepared by AdW Johnson, dated 18 November 2008.

**Gross floor area** means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic, but excludes:
  - (d) any area for common vertical circulation, such as lifts and stairs, and
  - (e) any basement:
    - (i) storage, and
    - (ii) vehicular access, loading areas, garbage and services, and
  - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
  - (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
  - (h) any space used for the loading or unloading of goods (including access to it), and
  - (i) terraces and balconies with outer walls less than 1.4 metres high, and
  - (j) voids above a floor at the level of a storey or storey above.

**Minister** means the Minister for Planning.

**PCA** means a Principal Certifying Authority and has the same meaning as Part 4A of the Act.

**Proponent** means Johnson Property Group or any party acting upon this approval.

**Regulation** means the *Environmental Planning and Assessment Regulation 2000*.

**Site** has the same meaning as the land identified in Part A of this schedule.

**Storey** means a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include:

- (a) a space that contains only a lift shaft, stairway or meter room, or
  - (b) a mezzanine, or
  - (c) an attic.
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## SCHEDULE 2

### MODIFICATIONS AND REQUIREMENTS FOR FUTURE APPLICATIONS

#### PART A – TERMS OF CONCEPT APPROVAL

##### **A1 Development Description**

Concept Plan approval is granted only to carrying out the development solely in accordance with the Concept Plan as described in the Preferred Project Report, prepared by AdW/Johnson Property Group, dated 5 June 2009, and as described in detail below.

The future buildings/uses on the land will be contained within two areas as follows:

##### ***Village piazza north of Trinity Point Drive***

1. The elevated piazza level will contain the following buildings:
  - The northernmost building consists of parking at ground level under the piazza and a restaurant at piazza level and 2 storeys of accommodation above with a pitched roof form.
  - The buildings on the southern side of the piazza at the entry and adjacent to the lake consist of parking at ground level with retail/business at piazza level and 3 storeys of accommodation and a pitched roof form.
  - The buildings along the southern and western edges framing the piazza comprise parking at ground level with function centre and retail/commercial at piazza level and three storeys of residential above one of which is included in the pitched roof form.
  - The building along the eastern edge of the piazza consists of parking at ground level (under half the building) and a café adjoining the pathway (split level) plus 2 residential levels above one of which is contained in the roof form.
  - The ground level marina buildings to the north of the piazza will be 2 storey.

##### ***Outside the piazza in southern part of the site***

2. The accommodation buildings outside the piazza level will comprise 1-2 storeys with some 3 storey corner elements and partly above a 1.2m protruding basement.

##### **Additional works**

The following building/works will be undertaken as shown on the Concept Plan:

- a marina and associated facilities including a boat travel lift;
  - a walkway/cycle path around the eastern edge of the development between the buildings and the foreshore reserve;
  - internal vehicular access roads and pedestrian pathways;
  - at-grade and basement parking areas;
  - stormwater management measures;
  - bulk earthworks; and
  - landscaping.
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## **A2 Project in accordance with Plans**

The development will be undertaken in accordance with the Environmental Assessment, dated November 2008, prepared by AdW Johnson, and as amended by the Preferred Project Report, dated 5 June 2009, prepared by AdW Johnson/Johnson Property Group and the following drawings except as modified by the conditions in Part B and C of approval below:

Alternative Marina Layout prepared by Worley Parsons			
Drawing No.	Revision	Name of Plan	Date
None	N/A	Trinity Point Alternative Marina Layout Concept Option 2	Not provided
Preferred Project Report prepared by AdW/Johnson Property Group			
Drawing No.	Revision	Name of Plan	Date
Principles 1 to 19	N/A	Preferred Project Report Part 3A Concept Plan Principles, Objectives & Urban Design Guidelines Trinity Point Marina and Mixed Use Development	5 June 2009
Not provided	N/A	Indicative Outcome – Summary Figure Plan by HBO+EMTB	No date – submitted with the PPR dated 5 June 2009
Not provided	N/A	Indicative Stage 1 Marina Outcome – Summary Figure Worley Parsons	No date – submitted with the PPR dated 5 June 2009
Not provided	N/A	Indicative Marina Outcome – Summary Figure Worley Parsons	No date – submitted with the PPR dated 5 June 2009
Not provided	N/A	Indicative Outcome – Summary Figure Worley Parsons	No date – submitted with the PPR dated 5 June 2009

## **A3 Development in Accordance with Documents**

The following documentation (including any appendices therein) is approved as part of the Concept Plan:

- Environmental Assessment Report Volume 1, prepared by AdW Johnson, dated 18 November 2008.
- Environmental Assessment Report Volume 2, prepared by Patterson & Britton and Partners, dated 17 November 2008.
- Additional Groundwater Sampling and testing prepared by Douglas Partners, dated 21 May 2008 Project 39823.04.
- Trinity Point Marina proposal, Numerical Modelling Investigation Addendum 1, prepared by Worley Parsons, dated 8 March 2009.
- Report on Geotechnical Investigation, prepared by Douglas Partners, Project No.. 39823 dated December 2007.
- Report on Geochemical Assessment, prepared by Douglas Partners, Project No.. 39823B dated December 2007.

- Acid Sulphate Soils Report, prepared by Douglas Partners, Project 39823A, dated December 2007.
- Validation Report, prepared by David Lane Associates, Version 2.
- Site Audit Report, prepared by JBS Environmental Pty Ltd, JBS 40108-11796, dated September 2007.
- Visual Assessment Report, prepared by Richard Lamb Associates, dated November 2008.
- Socio-Economic Report, prepared by Key Insights Pty Ltd, dated June 2008.
- Acoustic Assessment Report, prepared by Arup Acoustics, Job No. 86790 dated November 2008, as amended by Memorandum by ArupAcoustics dated 8 December and The Concept Plan document Principle 16-Acoustics dated 5 June 2009.
- Air Quality Report, prepared by Arup Sustainability, Job No. 86790, dated May 2008.
- Aquatic Ecology Report, prepared by The Ecology Lab Pty Ltd, dated November 2008.
- Terrestrial Ecological Assessment, prepared by Harper Somers O'Sullivan for Job Reference 20970 dated November 2008.
- Traffic Report, prepared by Better Transport Futures, dated November 2008.
- Crime Risk and Security Report, prepared by Harris Crime prevention Services, dated December 2007.
- Bushfire Assessment Report, prepared by Harper Somers O'Sullivan for Job Reference 20970, dated November 2007.
- Stormwater and Flooding Report, prepared by Patterson Britton & Partners Pty Ltd, dated November 2008.
- Breakwater Design Study, prepared by Patterson Britton & Partners Pty Ltd, dated December 2007.
- Coastal Processes Study, prepared by Patterson Britton & Partners Pty Ltd, dated December 2007.
- Marina Berth Demand Study, prepared by Patterson Britton & Partners Pty Ltd, dated November 2008.
- Numerical Modelling Investigation Report, prepared by Patterson Britton & Partners Pty Ltd, issued Nov 2008.
- Sediment Sampling Analysis Plan, prepared by Patterson Britton & Partners Pty Ltd in December 2007.
- Heritage Assessment Report, prepared by Insite Heritage Pty Ltd, dated 30th October 2008.
- Landscape Plan & Report, prepared by Terras Landscape Architects, dated 14/11/2008 for project No: 7279.5.
- External Infrastructure Investigation, prepared by Worley Parsons Recourses and Energy, dated 12 December 2007.
- Financial & Economic Assessment Report, prepared by Ernst & Young, dated 20 June 2008.

#### **A4     *Inconsistency between documents***

In the event of any inconsistency between conditions of this approval and the drawings/documents referred to above, the conditions of this approval prevail.

The revised Statement of Commitments in B4 prevails to the extent of any inconsistency in the plans and documentation identified in A3. The conditions of this approval override the Statement of Commitments prepared by the proponent.

The modifications of the Concept Plan approval identified in Part B and C Schedule 2 prevail over the documentation listed in A3 and A4 above.



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**A5     *Lapsing of Approval***

Approval shall lapse five years after the determination date in Part A of Schedule 1 of this approval unless Stage 1 is approved and physically commenced.

**A6     *Determination of Future Applications***

The determination of future applications is to be generally consistent with the terms of approval of Concept Plan MP06\_0309 as described in Part A and subject to the recommended modifications and conditions of approval set out in Parts B and C of Schedule 2.

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## **PART B – MODIFICATIONS TO THE CONCEPT PLAN**

### ***Marina***

#### ***B1 Construction of the Marina***

Prior to lodgement of a future project application for the marina the design is to be reviewed to ensure the following performance criteria are met:

- Minimise change to water flow in and around the marina;
- Minimise change to flushing characteristics and the water quality of Bardens Bay;
- Minimise wave bounce to ensure negligible impact on the seagrass meadow;
- Ensure appropriate movement of seagrass wrack into Bardens Bay;
- Minimise visual impact; and
- Ensure adequate protection from southerly weather patterns.

The review and any subsequent modifications to the layout must be submitted to the satisfaction of the Director-General prior to the lodgement of a project application.

#### ***B2 Marina staging***

The marina must be constructed in two stages with each stage being a maximum of 94 berths and subject to a separate future application which demonstrates there will be negligible impact on water quality due to the introduction of the marina.

### ***Travel Boat Lift***

#### ***B3 Reduction in the size of the travel boat lift***

The concept plan is to be amended as follows:

- The size of the travel boat lift is to be reduced to a maximum capacity of 45 tonne.
- Full details of the proposed boat workshop activities are to be provided. In that regard the workshop services are limited to small scale repairs and maintenance and no major mechanical, engineering or shipwright services are permitted on the site.

### ***Statement of Commitments***

#### ***B4 Statement of Commitments***

The Statement of Commitments (Preferred Project Report) should be amended as follows:

- Section 1.2 Summary of Commitments contained within concept plan document - Landuse

An additional sentence should be added "*At no stage of the development should the number of units approved for permanent residential use exceed the number of units approved for tourist use.*"

An additional sentence should be added "*The use of the tourist units is to be for short stay tourist accommodation purposes only and are not to be occupied by a person for more than 42 consecutive days or in aggregate no more than 150 days in any 12 month period.*"

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- Section 1.3 Additional Comments – Marina Staging

An additional sentence should be added "A maximum 45 tonne boat lift facility will be provided and no major mechanical, engineering or shipwright services will be undertaken on the site."

### **Urban Design Guidelines**

#### **B5 Changes to Urban Design Guidelines dated 5 June 2009, submitted as a Preferred Project Report**

The following change should be made to the wording in the entire document -The reference to "project applications" should be deleted and replaced with "future applications".

Principle 2 - Building Setbacks should be modified to include an additional guideline stating:

Future applications for buildings with a zero setback are to demonstrate a suitable level of detailing and articulation to ensure they add to the streetscape. Blank walls are to be avoided.

Principle 4 - Public Access and Open Space should be amended as follows:

Under Guidelines add an additional dot point stating that the design and construction of the roads and pedestrian path will allow for Public Authorities to access the 6(1) zoned land for maintenance and the like.

Principle 5 - Built Form should be amended as follows:

Under "Outside Village Piazza" add the following points:

- All buildings facing the foreshore shall have their facades articulated in order to break down bulk and scale. Devices such as awnings, eaves and verandas shall be used to cast shadows over facades to reduce visual impacts.
- All buildings facing the foreshore shall have a section of recessed façade that provides opportunity for planting of small native trees (mature height adjacent to the building in locations that will not obscure the view from any window facing the lake). The trees shall be planted at grade in deep soil.

Principle 8 – Vegetation is to be amended as follows

Under Guidelines add the following point:

- Substantial additional areas of the public reserve in front of the workshop areas shall be reinstated with Casuarina Glauca Open Forest.
- Where practical in terms of maintaining views the public reserve in front of the Village Piazza shall be re-instated with Casuarina Glauca Open Forest.

Principle 11-Water Management should be amended as follows:

All potential contaminants and their collection systems must be located so they are adequately protected from entering the lake during a 1:100 yr flood event, plus sea level rise. This includes but is not limited to things such as fuel, oil separators, first flush tanks and the like.

Principle 14 - Marina should be amended as follows:

Under Guidelines amend:

- Dot point 12 to say to (1.1 AHD) to be consistent with Principle 12 - Flooding.
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Principle 16 - Acoustics should be amended by adding:

- The general EPA criterion of background + 5 dB(A) when measured as an Leq level over 15 minutes at any residential boundary is a standard noise criterion used and will apply to this development.
- This background + 5 dB(A) criterion is commonly identified as the EPA's "intrusive noise" criterion and will cover all noise emitted from the operations of the development. The intrusive criterion will cover mechanical plant noise, the marina workshop and handstand area and all operations of the marina.
- Due to the intermittent nature of noise from the construction of the development the EPA's relevant Construction Noise Criteria will be adopted for the development.
- The noise limits for construction noise require extensive noise control measures to be maintained throughout the construction phase of the development with on-going noise and vibration monitoring to occur and the provision of a dedicated noise complaint hotline.
- The use of the marina is covered by the overall intrusive noise criterion. However to address intermittent noise events that may occur at night the EPA's sleep arousal criterion of background + 15 dB(A) when assessed as a L1 (1 minute) level outside any bedroom window, will be applied.
- As part of an overall acoustic control the proponent will be required to produce a Noise Management Plan that provides self imposed noise control measures, including speed restrictions for vessels in the vicinity of the marina.
- To protect the acoustic amenity of existing and future residents with respect to road traffic noise the proponent will be required to introduce noise control measures to obtain compliance with the recommended noise criteria set out in the EPA's Environmental Noise Criteria for Road Traffic Noise document.
- Whilst the Concept Plan has indicated preliminary acoustic concepts for the development and has been modified during the consultation process to address some of the acoustic issues, the actual controls that will be incorporated into the development have yet to be finalised, due to the concept nature of the application.

Principle 19 - Staging, Subdivision and Management should be amended as follows:

- In the last paragraph delete the words "*A change in form/style is permitted for the Village Piazza however*"
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## PART C- FUTURE APPLICATIONS

Pursuant to section 75P(2)(c) of the Act the following requirements apply with respect to future stages of the project to be assessed under Part 4 of the Act:

### **C1 Consistency of Future Development with Concept Plan as modified**

All future development including the marina must be consistent with the Concept Plan as modified by this approval in Part B.

### **C2 Development Parameters**

Future applications must comply with the following development parameters:

Development Parameter	Requirement
<b>Development north of Trinity Point Drive (Village Piazza)</b>	
<b>Number of Storeys (maximum)</b>	
- northernmost mixed use building	3 storeys above piazza Parking at ground level and a restaurant at piazza level and 2 storeys of accommodation above and a pitched roof form.
- southern mixed use buildings at the entry and adjacent to the lake	4 storeys above piazza Parking at ground level with retail/business at piazza level and 3 storeys of accommodation and a pitched roof form.
- southern and western mixed use buildings framing the piazza	4 storeys above piazza Parking at ground level with function centre and retail/commercial at piazza level and three storeys of residential above one of which is included in the pitched roof form.
- eastern building/cafe	2 storeys above parking
- marina buildings	2 storeys

Development south of Trinity Point Drive (outside Village Piazza)	
<b>Number of Storeys (maximum)</b>	
Buildings fronting the western boundary	3 storeys (above a 1.2m protruding basement) These buildings are attached and generally 1-2 storeys with some 3 storey corner elements. A maximum of 1 storey is allowed on the elevated southern part of the site.
Buildings between the proposed westernmost internal laneway and the foreshore reserve	2 storeys These buildings are detached with at-grade parking.

Development north of Trinity Point Drive (Village Piazza)	
<b>Building setback to the foreshore reserve (minimum)</b>	
- eastern buildings	15m Exceptions - the café is setback 6m at its northeastern corner and the northernmost mixed use building and marina buildings are setback 8m.
<b>Building setback to the unnamed inlet to the west (minimum)</b>	
All buildings	30m

Development south of Trinity Point Drive (outside the Village Piazza)	
<b>Building setback to the foreshore reserve (minimum)</b>	
- easternmost buildings	20m
- southernmost buildings	Variable up to 45m

All development	
<b>Floorspace</b>	
Total Floor Space Ratio (maximum)	0.65:1
Gross Floor Area	The split between the tourist and residential gross floor area should ensure a dominant tourist character is maintained at all times.
<b>Number of Units (maximum)</b>	
Residential Development	A maximum of 50% of the total number of units can be used as permanent residences. The site must maintain a dominant tourist character at all times.

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Note: Gross floor area, building height and storey must be measured in accordance with the definition within the *Standard Instrument (Local Environmental Plans) Order 2006*.

### **C3      *Urban Design***

The proposed development must comply with the Principles, Objectives and Urban Design Guidelines, AdW/ Johnson Property Group, dated 5 June 2009. A revised urban design guideline incorporating changes identified in Condition B5 must be submitted with the first application for development on the site. All future buildings must exhibit design excellence and consider whether:

- (a) a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,
- (b) the form and external appearance of the buildings will improve the quality and amenity of the public domain,
- (c) the buildings meet sustainable design principles in terms of sunlight, natural ventilation, wind, reflectivity, visual and acoustic privacy, safety and security and resource, energy and water efficiency

All future applications must demonstrate the building materials and colours comply with Principle 7 – Building Materials and Colours in the Preferred Project Report, prepared by AdW/ Johnson Property Group, dated 5 June 2009.

The residential buildings (where applicable) must demonstrate compliance or satisfactorily justify any non compliance, with the provisions of *State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development*.

### **C4      *Use of Accommodation for Tourist Purposes***

The use of the tourist units is to be for short stay tourist accommodation purposes only and no tourist unit on the site is to be occupied by a person for more than 42 consecutive days or in aggregate no more than 150 days in any 12 month period. Any future approval must impose a condition to that effect restricting the use of all short stay tourist units and prohibiting their use as permanent residences.

All future applications for the residential and tourist accommodation must provide a detailed Management Plan outlining operational and design measures that will be put in place to minimise the potential conflict between permanent resident and tourist user groups.

### **C5      *Restriction on Title – Tourist Use***

A restrictive covenant under Section 88E of the Conveyancing Act 1919, restricting the use of all tourist units (not approved for residential use) to short stay tourist purposes must be recorded on the title of each strata lot. The covenant will restrict the occupation of a strata lot by an owner or occupier to no more than 42 consecutive days or in aggregate no more than 150 days in any 12 month period. The restriction or covenant cannot be amended or revoked without Lake Macquarie City Council's consent. Any future approval must impose a condition requiring the restrictive covenant prior to the issue of a subdivision certificate.

### **C6      *Management Statement***

Any Community Management Statement or Strata Management Statement or similar relating to the approved tourist units is to include a prohibition against permanent residential usage or occupation of the tourist units within the scheme for more than 42 consecutive days or in aggregate no more than 150 days in any 12 month period.

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The Community Association will monitor compliance with this by-law and provide annual reports to Lake Macquarie City Council (LMCC). The Management Statement is to outline procedures to ensure compliance with this by-law. The following provisions must be imposed as by-laws and will only be able to be amended or revoked with the consent of LMCC.

1. A strata lot (not approved for residential use) may only be occupied by a person for a period of 42 consecutive days or in aggregate, no more than 150 days in any 12 month period;
2. The CA must maintain a record about the use of strata lots and make such record available to LMCC on request.
3. The proprietor or occupier of a lot must comply with the terms of any restriction on use or public positive covenant burdening the lot.

#### **C7      *Traffic and Parking***

A detailed Traffic Impact Study, prepared by suitable qualified traffic engineer, shall be provided for the entire site with the application for the first stage of development. This should include liaison with both the LMCC and the RTA in regard to the required intersection works for the proposal. Details of any agreements reached with the relevant road authorities regarding intersection works needs to be provided.

Future applications must also demonstrate compliance with Principle 10 – Roads, Vehicular Access & Parking in the Preferred Project Report, prepared by AdW/Johnson Property Group, dated 5 June 2009. Parking numbers are to be provided in accordance with in accordance with Lake Macquarie Development Control Plan No. 1.

The reduction in the number of marina berths results in a corresponding reduction in parking demand and the footprint of the parking areas should therefore be reduced accordingly to minimise excavation and reduce the extent of basement parking. A Parking Management Strategy should be provided to manage parking on the site including during peak events within the marina and village piazza.

#### **C8      *Sustainability***

Future applications shall address sustainability requirements including solar access and energy and water efficiency and meet the applicable requirements of BASIX, as a minimum.

#### **C9      *Vegetation Management Plan***

A Vegetation Management Plan (VMP) shall be provided for the entire site and approved as part of the application for the first stage of development (refer to Principle 8 – Vegetation in the Preferred Project Report, prepared by AdW/Johnson Property Group, dated 5 June 2009). The VMP must consider the criteria identified in the *Vegetation Management Plan Guidelines*, prepared by the Department of Water and Energy, (February 2008). The VMP will be prepared in consultation with the Department of Environment and Climate Change, Department of Water and Energy and Lake Macquarie City Council.

The VMP is to be prepared by a suitably qualified person and should address, but not be limited to, the following:

1. Provide details of vegetation to be retained and measures to protect riparian vegetation around the edge of the lake (including the unnamed inlet to the west) during the construction and operation phases of the development.
  2. Re-instatement of 0.05Ha of Swamp Oak Floodplain Forest within the northeastern portion of the unnamed inlet situated in the north of the site.
  3. Identify areas to be rehabilitated and details of the vegetation species, composition, planting, layout and densities of plants to re-vegetate these areas.
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4. Long term financial commitment to any proposed conservation measures, including any mechanisms to be implemented to achieve this and costings;
5. A Gantt Chart or similar project schedule which clearly identifies the activity, costing and timing.
6. Details of a S88B-E covenant of the Conveyancing Act 1919 to ensure the biodiversity off-set is managed for conservation and secured in perpetuity.
7. Outline ongoing management arrangements, including but not limited to responsibilities, funding and long term maintenance. The VMP must specifically address long term monitoring of the unnamed inlet and its mangrove and saltmarsh habitat to the west and establish criteria that can inform necessary changes to the VMP over time.
8. Provide details on weed control, access control, rubbish control, planting, monitoring and timing of revegetation works within the retained vegetation and the areas to be revegetated.
9. Management of specific habitat enhancement measures (e.g. hollow/habitat trees)
10. Details of the protection and revegetation of the area on the southern and southeastern part of the site containing River Flat Eucalyptus Forest EEC, including appropriate fencing.

#### **C10      *Landscape Plan***

A detailed Landscape Management Plan shall be provided for each relevant stage and approved in accordance with Principle 9 – Landscape in the Preferred Project Report, prepared by AdW/Johnson Property Group, dated 5 June 2009. It must provide details of the staging of the landscape treatment of the site with the intention of implementing the landscaping on site as soon as possible. Where relevant the Landscape Plan must provide information regarding:

1. managed public access across the proposed marina travel lift within the foreshore reserve;
2. a detailed species list appropriate to the site and the circumstances;
3. surface areas for all pedestrian pathways, boardwalk and public access areas;
4. fencing and any other works in the public domain;
5. details of landscape treatments and planting for parking areas;
6. the landscape interface between the private and public domain; and
7. retention of cultural landscape plantings including figs, palms and Norfolk Island Palms located near Bluff Point.

#### **C11      *Verification of Baseline Data for the Marina***

To ensure the satisfactory environmental performance of the marina the first stage application must provide verification of the following baseline data and where necessary provide new data in light of the review of the design:

1. current water flow and flushing characteristics in Bardens Bay, the small inlet/unnamed bay at the southern end of Bardens Bay and Petite Lake.
2. existing background concentrations of pollutants (eg. copper and zinc) in Bardens Bay and the marina location.
3. mapping and survey of the health and size of the seagrass bed to the south of the marina and the salt-marsh community in the unnamed inlet to the west.
4. survey of the foreshore to measure foreshore erosion from around the southern corner of the site to inside the unnamed inlet.

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**C12      *Final Marina Design***

Once the verified baseline data is accepted by the approval authority, the final design (both Stage 1 and 2) must demonstrate negligible impact on the environment and include:

1. 3D numerical modelling of the current water flow and flushing characteristics in Bardens Bay. This modelling is also to be provided for the small inlet/unnamed bay at the southern end of Bardens Bay and Petite Lake.
2. Particle tracking modelling for the final design from pollutant discharges within the proposed marina under a range of wind conditions.
3. Seagrass wrack tracking modelling for the final design demonstrating negligible impact on the health and size of the seagrass bed to the south of the marina
4. Identification of the syngnathid population (seahorses, pipe fish etc) in Bardens Bay and measures to mitigate any impact.
5. Best practice management measures that will be used to minimise impacts of the marina on the environment.

**C13      *Stage 1 - Marina Environmental Performance Monitoring***

Provide an Environmental Monitoring Program with the first stage application for the marina detailing how the environmental performance of Stage 1 will be monitored during construction and for one year from commencement of operation. Include an analysis of the level of contaminants in the sediment within the bed of the lake in the area of the proposed marina and measures to minimise disturbance during construction and from boat movements, in particular from propeller action.

**C14      *Stage 2 - Marina***

The expansion of the marina to include Stage 2 will only be permitted if it can be demonstrated there is satisfactory environmental performance of Stage 1 and that the environment is able to satisfactorily co-exist with the introduction of Stage 2. In that regard Stage 2 must demonstrate:

1. at least 75% take up of berths in Stage 1;
2. Compliance with Stage 1 construction and operational management and environmental licence conditions;
3. Satisfactory environmental performance of Stage 1 for a period of 1 year after completion which shows a negligible impact on foreshore erosion, flushing characteristics, pollutant levels, movement of seagrass wrack and water quality;
4. Appropriate modelling and assessment of the environmental performance of the final design of Stage 2 and a negligible impact on foreshore erosion, flushing characteristics, pollutant levels, movement of seagrass wrack and water quality in Bardens Bay.

**C15      *Boating Practice Manual***

Provide details of a responsible boating practice manual with the first stage of the marina addressing signage, education and other relevant measures to educate the boating public on practices to minimise the impacts of boating activities on turtles, foreshore erosion and other boat users including sailing courses.

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**C16      *Boat Lift Facility***

Provide details with the first stage marina application of the boat lift facility regarding its capacity, design and operational nature.

**C17      *Bushfire Protection***

All landscaping of the site must comply with the principles of Appendix 5 of the Planning for Bushfire Protection 2006. The enhancement of the foreshore vegetation should not increase the bushfire risk on the site.

**C18      *Implementation of the Vegetation Management Plan***

A detailed 'works plan' prepared by the qualified bush regenerator or landscape contractor is to be approved as part of any application for the first stage of development. The 'works plan' will identify the actions and tasks required to implement the recommendations/conditions in the approved Vegetation Management Plan (refer to Condition C9)

**C19      *Stormwater Management***

The first stage of the development must provide details of the proposed stormwater management system for the entire site in accordance with Site Principle 11 – Water Management in the Preferred Project Report, prepared by AdW/Johnson Property Group, dated 5 June 2009. The stormwater management plan should include:

1. best practice water sensitive urban design measures;
2. measures to ensure no impact from runoff on water quality in Bardens Bay and riparian vegetation around lake's edge in particular the mangoves and saltmarsh community in the unnamed bay to the west of the site;
3. rainwater harvesting, permeable pavements and bio-filtration swales;
4. preventative, containment and treatment measures for stormwater management from the marina workshop and hardstand area;
5. details of oily waste recycling and oily bilge from the pump out facility;
6. details of fuel storage tanks;
7. a water quality monitoring system during the construction phase and for 2 years from completion of the marina.
8. details of emergency response procedures and a management plan to deal with oil and fuel spills in and around the marina.

**C20      *Groundwater***

Future application(s) involving excavation are to provide details of how the water table and ground water will be managed during and after construction. Particular detail is to be provided in regard to the impacts to any EEC (eg. saltmarsh community) that relies on this water table and ground water.

**C21      *Flooding***

A detailed Flood Study, prepared by a qualified engineer must be provided for development on the flood prone land and address sea level rise adaption measures and strategies and evacuation plans and suitable flood level having regard to climate change. In that regard the future design and strategies should be consistent with Principle 12 – Flooding in the Preferred Project Report, prepared by AdW/Johnson Property Group, dated 5 June 2009.

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## **C22      *Aboriginal Heritage***

An Aboriginal Cultural Heritage Management Plan and Interpretation Policy must be provided for the entire site and approved as part of the first stage of the development. The Interpretation Policy shall be developed in conjunction with the aboriginal community and be based on the historical data, cultural knowledge and archaeological evidence specific to Trinity Point. The Interpretation Policy shall provide a framework for interpretation of Aboriginal values and heritage of the site to the public, inclusions into site interpretation and development details.

Future applications must demonstrate that the following requirements regarding aboriginal heritage have been satisfied for each relevant stage of the development:

1. retain and conserve built heritage items including the sundial and grotto adjoining the foreshore lands.
2. significant built heritage items that are to be retained are to be adequately protected during the works from potential damage. Protection systems must ensure that historic fabric is not damaged or removed.
3. retain cultural landscape plantings including figs, palms and Norfolk Island Palms located near Bluff Point.
4. an archival photographic record of the historic areas of the site in accordance with the NSW Heritage Council Guidelines for Photographic Archival recording in a Digital Capture Format prior to the commencement of any work on the site. The recording shall be referenced to a survey plan identifying the locations of all the images. A copy of the recording shall be lodged with the Department of Planning's Heritage Library and the Local Studies Collection of the Lake Macquarie Library.

## **C23      *Erosion and Sedimentation Control***

A detailed Soil and Water Management Plan shall be provided for each relevant stage of the development on the site. It should include measures to divert and treat sediment leaving the site to minimise impact on water quality and riparian vegetation around the lake's edge.

Erosion and sediment control measures are to be implemented prior to any works commencing at the site and must be maintained for as long as necessary after the completion of works, to prevent sediment and dirty water entering the watercourse. These control measures are to follow relevant management practices as outlined in the Landcom manual *"Managing Urban Stormwater: Soils and Construction – Volume 1" (4th Ed., 2004) - the "Blue Book"*.

## **C24      *Construction Management Plan***

A detailed Construction Management Plan (CMP) shall be provided for each relevant stage of the development on the site. The CMP shall address, but not be limited to, the following matters where relevant: hours of work; contact details of site manager; erosion and sediment control; traffic management; noise and vibration management; waste management and flora and fauna management.

The designs and construction methods and activities are to result in NIL or minimal harm to aquatic and riparian environments and will not cause erosion, sedimentation, or increase flood levels of waterfront land. All engineering, other structural works or natural landscaping proposed must be designed, constructed and operated by suitably qualified professionals, recognised in that specialised field. This relates particularly to vegetation rehabilitation practices.

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**C25      *Acoustic***

A detailed acoustic assessment addressing the concept plan conditions and modifications to minimise noise to the surrounding area shall be provided for each relevant stage of the development. This is to include a Construction Noise and Vibration Management Plan, Road Traffic Noise Plan and Operational Noise Management Plan. The proposal must comply with Principle 16 – Acoustics in the Preferred Project Report, prepared by AdW/Johnson Property Group, dated 5 June 2009.

**C26      *Public Access***

The future applications must demonstrate compliance with Principle 4 – Public Access & Open in the Preferred Project Report, prepared by AdW/Johnson Property Group, dated 5 June 2009. The design should maximise access opportunities through the site and ensure a high level of amenity and safety for pedestrians. Future applications must include the following key requirements to ensure a high quality and safe public access:

1. publicly accessible village piazza that relates to the lake edge and marina;
2. appropriate building setbacks to the foreshore reserve;
3. appropriate setback from southeastern corner of the site to create a publicly accessible open space at Bluff point on the elevated part of the site;
4. publicly accessible pathway around the southern and eastern edge of the development;
5. vistas from the public walkway into the village piazza at eye level;
6. east-west publicly accessible pathways from Trinity Point drive to the lake;
7. public access along the marina breakwater;
8. public access to the northern part of the site is not to be impeded by the marina access or boat lift; and
9. pedestrian pathway along the western edge of the marina hardstand/access to allow access from the northern tip to Trinity Point Drive (this is to be included in the marina hardstand area and not impact the saltmarsh community adjoining the unnamed bay).

**C27      *Mine Subsidence***

Any future application must ensure development on the subject site (Lot 31) is designed for the following mine subsidence parameters:

1. Subsidence: 150mm
2. Strains:  $\pm 2\text{mm/m}$
3. Tilt: 2mm/m

Certification from a qualified engineer will be required when construction details are finalised.

**C28      *Staging***

All stages must be carried out in a sequential manner. The development shall be staged so that the work continues with the portion of site immediately adjoining the first stage and continuing such that all work is contiguous with the development (no undeveloped parts between stage 1 and the remainder of the site).

**C29      *Recreational Boating Impacts***

The following information needs to be provided with the first application for the marina.

1. Undertake a snapshot analysis of existing patterns of use before development (immediate area around the development – southern end of the lake – (with the Channel as the midway marker). Snapshot analysis should consider 'regular' use
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patterns such as existing licensed sailing courses and a method of recording 'irregular' patterns of use (eg unorganised boating such as recreational fishing, cruising etc).

Upon completion of Stage 1 of the marina undertake a second snapshot analysis of the 'new' patterns of use. Determine any changes, and include qualitative feedback from the 'regular' known users – this may be undertaken via a user survey/on line feedback. Determine the effects of the increased 'irregular' use patterns and identify measures to mitigate any adverse impacts.

The purposes of monitoring the recreational usage patterns is to determine impacts on user groups and activities and changes in destination patterns which may impact on particular existing established users.

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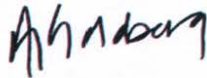
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## **Appendix B – Modified Concept Approval 06\_0309 MOD 2**

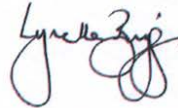
## Modification of Minister's Approval

### Section 75W of the *Environmental Planning & Assessment Act 1979*

As delegate of the Minister for Planning under delegation executed on 14 September 2011, we the Planning Assessment Commission of New South Wales (the Commission) approve the modification of the Concept Plan referred to in Schedule 1, subject to the conditions in Schedule 2.



Abigail Goldberg  
Member of the Commission



Lynelle Briggs AO  
Chairperson of the Commission

Sydney

9 April 2015

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#### SCHEDULE 1

**Concept Approval:**

06\_0309 granted by the Minister for Planning on 5 September 2009.

**For the following:**

- 188 berth marina and associated maintenance and club facilities;
- 150 accommodation units (75 tourist and 75 residential);
- restaurant, café, function centre, shops and office; and
- parking, landscaping and boardwalk.

**Modification:**

- 06\_0309 MOD 2 involving amendments to:
- revise the marina staging from two to five stages;
  - permit the berthing of two vessels up to 30 m in length;
  - revise the marina layout;
  - remove the slipway, boat lift, maintenance and associated oily bilge pump out facilities;
  - convert the vessel hard stand, boat lift and maintenance facility to a car park;
  - reduce the building setback to the unnamed bay from 30 m to 28 m;
  - revise Term C12 to provide flexibility in the modelling requirements for Petite Lake; and
  - undertake administrative modifications to the terms of approval in parts A to C of Schedule 2 to reflect the revised staging arrangements for the marina component of the development and the revised and marina layout.



## SCHEDULE 2

The above approval is modified as follows:

1. Delete Part A - Table in Schedule 1 and replace with the following:

### PART A - TABLE

<b>Application made by:</b>	Johnson Property Group
<b>Application made to:</b>	Minister for Planning
<b>Project Application:</b>	06_0309
<b>On land comprising:</b>	Lot 31 DP 1117408, Pt Lot 32, DP 1117408, Pt Lot 33 DP1117408, and Pt Crown Land (the lake)
<b>Local Government Area</b>	Lake Macquarie City Council
<b>For the carrying out of:</b>	<ul style="list-style-type: none"> <li>• 188 berth marina and associated club facilities;</li> <li>• 150 accommodation units (75 tourist and 75 residential);</li> <li>• restaurant, café, function centre, shops and office; and</li> <li>• parking, landscaping and boardwalk.</li> </ul>
<b>Type of development:</b>	Major Project
<b>Determination made on:</b>	5 September 2009

2. In Schedules 1 and 2 delete all references to 'Director-General', 'Department of Environment and Climate Change', 'Department of Planning' and 'Roads and Traffic Authority' and replace them with 'Secretary', 'Office of Environment and Heritage', 'Department of Planning and Environment' and 'Roads and Maritime Services' respectively.

4. Insert the following definitions in Schedule 1 in alphabetical order:

<b>EMP</b>	means Environmental Monitoring Program.
<b>Land Based Development</b>	means all development as described in term A1 of this approval, with the exception of the marina and associated facilities, including marina operations (office, chandlery, boat user facilities), and associated access, parking, works and infrastructure.
<b>Marina Development</b>	means the marina and associated facilities, including marina operations (office, chandlery, boat user facilities), and associated access, parking, works and infrastructure.
<b>MSB</b>	means the Mine Subsidence Board, or its successors.
<b>MSIS</b>	means a Mine Subsidence Impact Statement.
<b>NOW</b>	means the NSW Office of Water, or its successors.
<b>OEH</b>	means the Office of Environment and Heritage, or its successors.
<b>RMS</b>	means Roads and Maritime Services, or its successors.
<b>SMP</b>	means Stormwater Management Plan.
<b>VMP</b>	means Vegetation Management Plan.

5. Delete Term A1 in Schedule 2 and replace with the following:

**A1 Development Description**

Concept Plan approval is granted only to carrying out the development solely in accordance with the Concept Plan as described in:

1. the Preferred Project Report, prepared by AdW/Johnson Property Group, dated 5 June 2009, as modified by the following documents:
  - (a) the s75W modification application dated 6 August 2014 (MOD 4) prepared by Johnson Property Group; and
  - (b) the s75W modification dated 15 August 2014 (MOD 2) prepared by Johnson Property Group.

The future buildings/uses on the land will be contained within two areas as follows:

**Village Piazza North of Trinity Point Drive**

2. The elevated piazza level will contain the following buildings:
  - the northern most building consists of parking at ground level under the piazza and a restaurant at piazza level and 2 storeys of accommodation above with a pitched roof form;
  - the buildings on the southern side of the piazza at the entry and adjacent to the lake consist of parking at ground level with retail/business at piazza level and 3 storeys of accommodation and a pitched roof form;
  - the buildings along the southern and western edges framing the piazza comprise parking at ground level with function centre and retail/commercial at piazza level and three storeys of residential above one of which is included in the pitched roof form;
  - the building along the eastern edge of the piazza consists of parking at ground level (under half the building) and a café adjoining the pathway (split level) plus 2 residential levels above one of which is contained in the roof form; and
  - the ground level marina buildings to the north of the piazza will be 2 storeys.

**Outside the Piazza in Southern Part of the Site**

3. The accommodation buildings outside the piazza level will comprise 1-2 storeys with some 3 storey corner elements and partly above a 1.2m protruding basement.

**Additional Works**

The following building/works will be undertaken as shown on the Concept Plan:

- a marina and associated facilities;
- a walkway/cycle path around the eastern edge of the development between the buildings and the lake edge;
- internal vehicular access roads and pedestrian pathways;
- at-grade and basement parking areas;
- stormwater management measures;
- bulk earthworks; and
- landscaping.

6. Delete Term A2 in Schedule 2 and replace with the following:

**A2 Project in Accordance with Plans**

The development must be undertaken in accordance with:

1. The Environmental Assessment, dated November 2008, prepared by AdW Johnson, as amended by the Preferred Project Report, dated 5 June 2009, prepared by AdW Johnson/Johnson Property Group, as modified by the following documents:



- (a) the s75W modification dated 6 August 2014 (MOD 4) prepared by Johnson Property Group;
- (b) the s75w modification dated 15 August 2014 (MOD 2) prepared by Johnson Property Group; and
- (c) the following drawings except as modified by the conditions in Part B and C of approval below:

Preferred Project Report prepared by AdW/Johnson Property Group			
Drawing No.	Revision	Name of Plan	Date
Principles 1 to 13, 16 -19	N/A	Preferred Project Report Part 3A Concept Plan Principles, Objectives & Urban Design Guidelines Trinity Point Marina and Mixed Use Development, as modified by the s75w modification dated 15 August 2014 (MOD 2) and excluding Principle 14.	5 June 2009
Principle 14	N/A	Principle 14	November 2014
Not provided	N/A	Indicative Outcome – Summary Figure Plan by HBO+EMTB, as modified by marina concept.as listed below	No date – submitted with the PPR dated 5 June 2009
Modified Concept Plan - Marina Layout Prepared by RHDHV			
8A0379-MA_LB031	B	Concept Marina Layout Overall	4 August 2014
8A0379-MA_LB021	B	Concept Marina Layout Stage 1a & 1 b	4 August 2014
8A0379-MA_LB011	C	Concept Marina Layout Stage 1a	15 January 2014

7. Insert the following additional documents after the final bullet point in Term A3 in Schedule 2 as follows:

- Response to Lake Macquarie City Council comments, updated modification (MOD 2) to Concept Approval (MP 06\_0309) Trinity Point Marina and Mixed Use Development, prepared by Johnson Property Group, dated 8 October 2014.
- Response to public and community group submissions, updated modification (MOD 2) to Concept Approval (MP 06\_0309) Trinity Point Marina and Mixed Use Development, prepared by Johnson Property Group, dated 10 October 2014.
- Response to requested clarifications, section 75W MOD 2 to Concept Plan (MP 06\_0309) Trinity Point Marina and Mixed Use Development, prepared by Johnson Property Group, dated 12 November 2014.
- Response regarding floating breakwater design, prepared by Royal Haskoning DHV, dated 12 November 2014.
- Additional response regarding incorporation of boats in excess of 20 m within the marina, prepared by Royal Haskoning DHV, dated 12 November 2014.
- Supplementary Visual Impact Assessment, prepared by Richard Lamb and Associates, undated.

8. Delete Term B2 in Schedule 2 and replace with the following:

**B2 Marina Staging**

The marina must be constructed in up to five stages (stages 1a, 1b, 2a, 2c and 2b) to include a maximum of 188 berths. Stages 1 and 2 shall include 94 berths each. In seeking approval for Stage 2 (stages 2a, 2b and 2c) the Proponent must demonstrate to the satisfaction of the consent authority, that Stage 1 has had a negligible impact on water quality. The Proponent must provide details of the casual berthing arrangements for Stages 1 and 2 as part of each development application for the marina.

In constructing the marina in stages, the Proponent shall ensure:

1. Stages 1a and 1b together must not exceed a total maximum of 94 berths.
2. Stage 1a of the marina must include sewage pump-out and fuel facilities on a wharf that may be in a temporary location and temporary casual public berthing for up to two vessels as per drawing 8A0379-MA\_LB011 Rev C dated 15 January 2015.
3. The location of the final fuel wharf/pump-out facility must be provided in Stage 2b as per drawing 8A0379-MA\_LB031.

9. Delete Term B3 'Reduction in the size of the travel boat lift' in Schedule 2 in its entirety.

10. In Term B5 in Schedule 2, amend Principle 8 - Vegetation as follows:

Principle 8 – Vegetation is to be amended as follows:

A landscape plan shall be provided with the first development application for the marina which incorporates an appropriate level of screening along the northern boundary of the marina car park. Screening should be comprised of *Casurina Glauca Open Forest* as a minimum.

11. In Term B5 in Schedule 2, amend Principle 14 as follows:

Principle 14 – Marina shall be amended to delete bullet point 3 of the guidelines and replace with:

The proposed marina will provide for boats predominantly up to a maximum length of 20 m with the option to provide up to two berths for boats between 20-30 m with a maximum draught of 1.9 m in locations as shown in Figure 10b of Principle 14. No dredging is permitted to facilitate the berthing of any vessels.

**Note:** The berthing of boats with a draught in excess of 1.9 m in the locations identified in Figure 10b in Principle 14 may be permitted if it can be demonstrated that these vessels can safely pass through the Swansea Channel.

12. In Term C2 in Schedule 2 delete the third table and replace with the following:

<b>Development north of Trinity Point Drive (Village Piazza)</b>	
<b>Building setback to the foreshore reserve (minimum)</b>	
Eastern Buildings	15 m Exceptions: <ul style="list-style-type: none"><li>• the café is setback 6 m on the north-eastern corner and the northern most mixed-use building; and</li><li>• marina buildings are setback 8 m with the exception of balconies/terraces, slab/roof overhangs and blade walls.</li></ul>
<b>Building setback to the unnamed inlet to the west (minimum)</b>	



All Buildings	28 m, with the exception of slab/roof structures and associated columns.
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13. Delete Term C3 in Schedule 2 and replace with the following:

**C3 Urban Design**

The proposed development must comply with the Principles, Objectives and Urban Design Guidelines, prepared by AdW/Johnson Property Group, dated 5 June 2009. A revised urban design guideline incorporating changes identified in Term B5 must be submitted with the development application for the first land based development. All future buildings must exhibit design excellence and consider whether:

- (a) a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved;
- (b) the form and external appearance of the buildings will improve the quality and amenity of the public domain; and
- (c) the buildings meet sustainable design principles in terms of sunlight, natural ventilation, wind, reflectivity, visual and acoustic privacy, safety and security and resource, energy and water efficiency.

All future applications must demonstrate the building materials and colours comply with Principle 7 – Building Materials and Colours in the Preferred Project Report, prepared by AdW/ Johnson Property Group, dated 5 June 2009.

The residential buildings (where applicable) must demonstrate compliance or satisfactorily justify any non-compliance, with the provisions of *State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development*.

14. Delete Term C9 in Schedule 2 and replace with the following:

**C9 Vegetation Management Plan – Marina Component**

A Vegetation Management Plan (VMP) shall be prepared for the marina and the foreshore (including the marina car park) and approved by the consent authority as part of the development application for the first stage of the marina development (refer to Principle 8 – Vegetation in the Preferred Project Report, prepared by AdW/Johnson Property Group, dated 5 June 2009). The VMP must consider the criteria identified in the *Guidelines for Vegetation Management Plans*, prepared by the NSW Office of Water (NOW) (July 2012). The VMP must be prepared in consultation with the Office of Environment and Heritage (OEH), NOW and Lake Macquarie City Council. The VMP is to be prepared by a suitably qualified person and should address the following as they relate to the marina:

1. Provide details of vegetation to be retained and measures to ensure that existing native vegetation around the edge of the lake is protected (including the unnamed inlet to the west) during the construction and operational phases of the development.
2. Re-instatement of 0.05 ha of Swamp Oak Floodplain Forest within the north-eastern portion of the unnamed inlet situated in the north of the site.
3. Identify areas to be rehabilitated and reinforced with further native vegetation, including details of the vegetation species, composition, planting, layout and densities of plants to re-vegetate in these areas.
4. Detail the long term financial commitments to any proposed conservation measures, including any mechanisms to be implemented to achieve this and costings.
5. Provide a gantt chart or similar project schedule which clearly identifies the activity, costing and timing.
6. Provide details of any S88B-E covenant required under the *Conveyancing Act 1919* to ensure the biodiversity off-set is managed for conservation and secured in perpetuity, if deemed necessary.

7. Outline the ongoing management arrangements, including but not limited to responsibilities, funding and long term maintenance. The VMP must specifically address long term monitoring of the unnamed inlet and its mangrove and saltmarsh habitat to the west, and establish criteria that can inform necessary changes to the VMP over time.
8. Provide details on weed control, access control, rubbish control, planting, monitoring and timing of revegetation works within the retained vegetation and the areas to be revegetated.
9. Detail the management of specific habitat enhancement measures (e.g. hollow/habitat trees).
10. Details of the protection and revegetation of the area on the southern and south-eastern part of the site containing River Flat Eucalyptus Forest EEC, including appropriate fencing.

15. Insert new Term C9A in Schedule 2 after Term C9 as follows:

**C9A Vegetation Management – Whole of Site**

A whole of site VMP shall be prepared and submitted with the development application for the first stage of the land based development (refer to Principle 8 - Vegetation in the Preferred Project Report prepared by AdW/Johnson Property Group, dated 5 June 2009). The VMP shall be prepared by a suitably qualified person, be consistent with the VMP required by Term C9 of this approval, and shall address parts 1 to 10 of Term C9, where relevant. An appropriate whole of site VMP must be approved by the consent authority as part of the development application for the first stage of the land based development.

16. Delete Term C10 1. in Schedule 2 and update the numbering accordingly.
17. Delete Term C12 in Schedule 2 and replace with the following:

**C12 Final Marina Design**

1. The marina shall be designed in accordance with the relevant Australian Standards for marina developments.
2. Once the verified baseline data is accepted by the consent authority, the final design (all stages) must demonstrate negligible impact on the environment and include:
  - (a) 3D modelling, or alternative, of the current water flow and flushing characteristics in Bardens Bay, the un-named inlet at the southern end of Bardens Bay and Petite Lake. The methodology is to be approved by the consent authority following the verification of the baseline data.
  - (b) Particle tracking modelling for the final design from pollutant discharges within the proposed marina under a range of wind conditions.
  - (c) Seagrass wrack tracking modelling for the final design demonstrating negligible impact on the health and size of the seagrass bed to the south of the marina
  - (d) Identification of the syngnathid population (seahorses, pipe fish etc) in Bardens Bay and measures to mitigate any impact.
  - (e) Best practice management measures that will be used to minimise impacts of the marina on the environment.

18. Delete Term C13 in Schedule 2 and replace with the following:

**C13 Stages 1a and 1b - Marina Environmental Performance Monitoring**

An Environmental Monitoring Program (EMP) must be prepared and submitted as part of the first development application for the marina. The EMP must detail how the environmental performance of Stages 1a and 1b will be monitored during construction, and for one year from commencement of operation. The EMP must include an analysis



of the level of contaminants in the sediment within the bed of the lake in the area of the proposed marina and measures to minimise disturbance during construction and from boat movements, in particular from propeller action.

19. Delete Term C14 in Schedule 2 and replace with the following:

**C14 Stages 2a, 2b and 2c - Marina**

The expansion of the marina to include Stages 2a, 2b and 2c shall only be permitted if it can be demonstrated there is satisfactory environmental performance of Stages 1a and 1b and that the environment is able to satisfactorily co-exist with the introduction of Stages 2a, 2b and 2c. In this regard, any application for Stages 2a, 2b and 2c must demonstrate:

1. At least 75% take up of berths in Stages 1a and 1b.
2. Compliance with Stages 1a and 1b construction and operational management and environmental licence conditions.
3. Satisfactory environmental performance of Stages 1a and 1b for a period of one year after completion which shows a negligible impact on foreshore erosion, flushing characteristics, pollutant levels, movement of seagrass wrack and water quality.
4. Appropriate modelling and assessment of the environmental performance of the final design of Stages 2a, 2b and 2c and a negligible impact on foreshore erosion, flushing characteristics, pollutant levels, movement of seagrass wrack and water quality in Bardens Bay.

The information required under sub-clauses 1 to 4 above must be provided to the satisfaction of the consent authority with the development applications for stages 2a, 2b and 2c.

20. Delete Term C15 in Schedule 2 and replace it with the following:

**C15 Responsible Boating Practice Manual**

A responsible boating practice manual shall be submitted with the development application for the Stage 1a marina works. The responsible boating practice manual must address the following matters:

1. Signage.
2. Education and other relevant matters to educate the boating public and marina users on measures to minimise the impacts of boating activities on turtles, foreshore erosion, water quality including the appropriate use, management and disposal of oily bilge pads and other potential conflicts with other boat users.
3. Measures for the use, management and disposal of oily bilge pads including the location of the oily bilge pad disposal facility.

21. Delete Term C16 in Schedule 2 in its entirety.

22. Delete Term C19 in Schedule 2 and replace it with the following:

**C19 Stormwater Management – Marina Development**

The development application for the first stage of the marina development must provide details of the proposed stormwater management system for the marina site, including any associated car parking facilities in accordance with Site Principle 11 – Water Management in the Preferred Project Report, prepared by AdW/Johnson Property Group, dated 5 June 2009. The Stormwater Management Plan (SMP) should include:

1. Best practice water sensitive urban design measures.
2. Measures to ensure no impact from runoff on water quality in Bardens Bay and riparian vegetation around lake's edge in particular the mangroves and saltmarsh community in the un-named bay to the west of the site.
3. Rainwater harvesting, permeable pavements and bio-filtration swales.

4. Details of fuel storage tanks.
5. A water quality monitoring system during the construction phase and for 2 years from completion of the marina.
6. Details of emergency response procedures and a management plan to deal with oil and fuel spills in and around the marina.

An appropriate Stormwater Management Plan must be approved by the consent authority as part of the development application for the first stage of the marina development.

23. Insert new Term C19A in Schedule 2 after Term C19 as follows:

**C19A Stormwater Management – Whole of Site**

A whole of site Stormwater Management Plan (SMP) shall be prepared and submitted as part of the development application for the first stage of the land based development (refer Site Principle 11 – Water Management in the Preferred Project Report, prepared by AdW/Johnson Property Group, dated 5 June 2009). The SMP shall include details of the proposed stormwater management system for the entire site and shall be consistent with the SMP required by Term C19 of this approval and include all matters where relevant listed in Term C19. An appropriate whole of site SMP must be approved by the consent authority as part of the development application for the first stage of the land based development.

24. Delete Term C26 in Schedule 2 and replace with the following:

**C26 Public Access**

The future applications must demonstrate compliance with Principle 4 – Public Access & Open Space in the Preferred Project Report, prepared by AdW/Johnson Property Group, dated 5 June 2009. The design should maximise access opportunities through the site and ensure a high level of amenity and safety for pedestrians. Future applications must provide:

1. A publicly accessible village piazza that relates to the lake edge and marina.
2. Appropriate building setbacks to the foreshore reserve.
3. An appropriate setback from south-eastern corner of the site to create a publicly accessible open space at bluff point on the elevated part of the site.
4. A publicly accessible pathway around the southern and eastern edge of the development, either within the development Site, or within the adjoining Council foreshore reserve. Pathways within Council land are subject to agreement from Council.
5. Vistas from the public walkway into the village piazza these vistas must be provided at eye level.
6. Provide a network of east-west publicly accessible pathways from Trinity Point Drive to the lake.
7. Public access along the landward floating boardwalk parallel to the foreshore and its connections to the foreshore, in accordance with drawing number 8A0379-MA\_LB031, revision B dated 4 August 2014.
8. Public access to the northern part of the site, access is not to be impeded by the marina.
9. A publicly accessible pedestrian pathway from Trinity Point Drive along the edge of the western access way, may be provided either within the development site or within the adjoining Council reserve, subject to agreement from Council, to a point south of the marina car park, to allow access across the car park to the eastern foreshore.

25. Delete Term C27 in Schedule 2 and replace with the following:

**C27 Mine Subsidence**



1. Prior to the commencement of detailed design, the Proponent must submit a Mine Subsidence Impact Statement (MSIS) to the satisfaction of the Mine Subsidence Board (MSB), which demonstrates how the impact of mine subsidence will be managed. The MSIS shall identify:
  - (a) mine subsidence design parameters adopted;
  - (b) the main building elements and finishes;
  - (c) the outcomes of a mine subsidence risk assessment of building elements;
  - (d) mine subsidence mitigation measures proposed for each building element; and
  - (e) comment on the sensitivity of the design to greater levels of mine subsidence.
2. The Proponent shall ensure that the final design for any future development applications incorporates the recommendations of the MSIS (referred to in Term C27 above) to the satisfaction of the MSB prior to commencement of construction. This shall include certification by a qualified structural engineer to the effect that the improvements will remain "safe, serviceable and any damage from mine subsidence will be negligible, localised and readily repairable" taking into consideration the mine subsidence parameters approved by the MSB.
3. The Proponent shall ensure that on completion of any structural works, certification by a qualified structural engineer is forwarded to the MSB, that all improvements have been constructed in accordance with plans approved by the MSB under the relevant development application with supporting documentation.
4. Any future applications must ensure development on the Site is designed for the following mine subsidence parameters:
  - (a) Development on land below RL 2.0 AHD:
    - (i) maximum vertical subsidence = 50 mm;
    - (ii) maximum ground strains = +/- 1 mm/m;
    - (iii) maximum tilt = 1 mm/m; and
    - (iv) maximum radius of curvature = 10 km.
  - (b) Development on land above RL 2.0 AHD:
    - (i) maximum vertical subsidence = 150 mm;
    - (ii) maximum ground strains = +/- 2 mm/m;
    - (iii) maximum tilt = 2 mm/m; and
    - (iv) maximum radius of curvature = 5 km.
  - (c) Development over the water including the marina:
    - (i) maximum vertical subsidence = 400 mm;
    - (ii) maximum ground strains = +/- 4mm/m;
    - (iii) maximum tilt = 7 mm/m; and
    - (iv) maximum radius of curvature = 2.5 km.
26. In Term C29 replace 'Stage 1' in the second last paragraph with 'Stages 1a and 1b'.
27. Insert new Term C30 in Schedule 2 after Term 29 as follows:
 

**C30 Marina Car Park**  
 The Proponent shall ensure:

  1. The marina car park is to be set above the 20 year ARI flood level to 1.23 AHD.
  2. Any shortfall in car parking for the marina shall be considered as part of the first development application for the land based component of the development.

28. Insert new Term C31 in Schedule 2 as follows:

**C31 Marina Safety**

The Proponent shall ensure that:

1. Any development application proposing the construction of a marina arm/s, breakwater, or fuel facility must be accompanied by a plan identifying all signage or navigational aids to facilitate the safe passage of boats as they immediately enter and leave the marina (and within the lease area) and within the marina.
2. Any future development applications relating to the marina must include a contingency plan to address how sinking vessels would be retrieved and removed from the site.

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**END OF MODIFICATION MP06\_0309 MOD 2**

## **Appendix C –Department of Planning and Environment SEARS**

# Environmental Assessment Requirements

Section 78A (8) of the *Environmental Planning and Assessment Act 1979*.

Designated Development

<b>EAR Number</b>	833
<b>Proposal</b>	Marina
<b>Location</b>	71 Trinity Point Drive Morisset Park NSW
<b>Applicant</b>	Johnson Property Group
<b>Date of Expiry</b>	5 June 2016
<b>General Requirements</b>	The Environmental Impact Statement (EIS) must meet the minimum form and content requirements in clauses 6 and 7 of Schedule 2 of the <i>Environmental Planning and Assessment Regulation 2000</i> .
<b>Key Issues</b>	<ul style="list-style-type: none"> <li>• <b>strategic context</b> – including: <ul style="list-style-type: none"> <li>– justification for the proposal and suitability of the site; and</li> <li>– demonstration that the proposal is consistent with all relevant planning strategies, environmental planning instruments, development control plans (DCPs), and justification for any inconsistencies.</li> </ul> </li> <li>• <b>visual impacts</b> – of buildings and berthed vessels, particularly when viewed from: <ul style="list-style-type: none"> <li>– properties along the foreshore areas;</li> <li>– waterway users; and</li> <li>– public and other significant land based vantage points.</li> </ul> </li> <li>• <b>hydrology and water quality issues</b> – including: <ul style="list-style-type: none"> <li>– benthic morphology; water flow in and around the marina, flushing, and wave bounce; and</li> <li>– measures implemented to mitigate impacts to water quality and the nearby seagrass beds.</li> </ul> </li> <li>• <b>soil and water</b> – including: <ul style="list-style-type: none"> <li>– impacts on ground and surface waters;</li> <li>– a flooding assessment;</li> <li>– soil contamination and acid sulphate soils;</li> <li>– details of proposed erosion and sediment controls;</li> <li>– proposed stormwater management systems; and</li> <li>– management measures for the containment of pollutants (e.g. fuel, sewage and other wastes).</li> </ul> </li> <li>• <b>aquatic flora and fauna</b> – particularly with regard to critical habitats, protected species, threatened species, populations or ecological communities, or their habitats, as well as marine vegetation. The presence and potential spread of the pest species must be detailed;</li> <li>• <b>marine safety and navigation</b>– including weather protection and an assessment of impacts to marine traffic;</li> <li>• <b>noise and vibration</b> – including construction, operation and traffic noise in accordance with the relevant Environment Protection Authority guidelines. The assessment must consider any potential impacts on nearby private receptors and the suitability of any noise mitigation measures.</li> <li>• <b>road traffic impact</b> – including construction and operation traffic, parking and road access.</li> <li>• <b>heritage</b> – including Aboriginal Cultural Heritage;</li> <li>• <b>public access</b>;</li> <li>• <b>mine subsidence</b>; and</li> <li>• <b>waste management</b>.</li> </ul>

<b>Environmental Planning Instruments</b>	<p>The EIS must assess the proposal against the relevant environmental planning instruments, including but not limited to</p> <ul style="list-style-type: none"> <li>• <i>Lake Macquarie Local Environmental Plan 2004</i></li> <li>• <i>Lake Macquarie DCP 2014</i></li> <li>• <i>Draft Lake Macquarie LEP 2014</i></li> <li>• <i>Lower Hunter Regional Strategy</i></li> <li>• <i>Lake Macquarie Mooring Management Plan</i></li> <li>• Relevant development control plans and section 94 plans.</li> </ul>
<b>Guidelines</b>	<p>It is recommended that during the preparation of the EIS you consult the Department's <i>EIS Guideline Marinas and Related Facilities</i>. This guideline is available for viewing on the department's website <a href="http://www.planning.nsw.gov.au">www.planning.nsw.gov.au</a>.</p>
<b>Consultation</b>	<p>During the preparation of the EIS, you must consult the relevant local, State and Commonwealth government authorities, service providers and community groups, and address any issues they may raise in the EIS. In particular, you should consult with:</p> <ul style="list-style-type: none"> <li>• The Environment Protection Authority;</li> <li>• The Office of Environment and Heritage;</li> <li>• Department of Primary Industries;</li> <li>• Roads and Maritime Services;</li> <li>• Lake Macquarie Council;</li> <li>• Lake Macquarie Estuary and coastal Management committee;</li> <li>• Lake Macquarie aquatic Service Committee;</li> <li>• Biraban Local Aboriginal Land Council;</li> <li>• Bahtabah Local Aboriginal Land Council; and</li> <li>• The surrounding landowners and occupiers that are likely to be impacted by the proposal.</li> </ul>

## **APPENDIX D – CONDITIONS**

## **APPENDIX E – SUMMARY OF APPROVAL AND APPLICATION PROCESS**



# trinity point

LAKE MACQUARIE

## TRINITY POINT MARINA AND MIXED USE DEVELOPMENT MP 06\_0309

<p><b>MOD 1 &amp; 4</b></p> <p>—</p> <p>Extension to lapse date APPROVED</p>	<p><b>MOD 2</b></p> <p>—</p> <p>Marina Related Mods APPROVED</p>	<p><b>MOD 3</b></p> <p>—</p> <p>Addition of Helipad AWAITING ENVIRONMENTAL ASSESSMENT TO BE PROVIDED BY PROPONENT  ONCE RECEIVED BY DPE, EXHIBITION AND ASSESSMENT TO FOLLOW</p>	<p><b>MOD 5</b></p> <p>—</p> <p>Site Planning Mods (including building heights and forms, additional capacity for short stay and residential accommodation)  SUBMITTED OCTOBER 2014  EXHIBITION COMPLETED DECEMBER 2014 RESPONSE TO SUBMISSIONS APRIL 2015</p>	<p><b>ASSESSMENT BY DEPARTMENT OF PLANNING &amp; ENVIRONMENT</b></p> <p><b>DETERMINATION LIKELY BY PLANNING ASSESSMENT COMMISSION</b></p>
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<p><b>DEVELOPMENT APPLICATIONS</b></p> <p>—</p> <p>DA 1503/2014  Stage 1 Marina DA (94 berths) Designated Development, EIS  UNDER ASSESSMENT BY LMCC DETERMINATION BY JRPP  Future Development Applications Stage 2 Marina</p>	<p><b>DEVELOPMENT APPLICATIONS</b></p> <p>—</p> <p>DA 1176/2014  Helipad Designated Development, EIS to be lodged  ON HOLD PENDING RECEIPT OF EIS FROM APPLICANT TO ADDRESS ISSUED SECRETARY ENVIRONMENTAL ASSESSMENT REQUIREMENTS (DPE)  EXHIBITION, ASSESSMENT AND DETERMINATION BY LMCC</p>	<p><b>DEVELOPMENT APPLICATIONS</b></p> <p>—</p> <p>DA 1731/2014  Tourism and Hospitality  UNDER ASSESSMENT LMCC, DETERMINATION BY JRPP</p>	<p><b>DEVELOPMENT APPLICATIONS</b></p> <p>—</p> <p>DA 496/2015  Serviced Apartments &amp; Residential Apartments  UNDER ASSESSMENT LMCC, DETERMINATION BY JRPP  Future Development Application/s Remaining components of concept approval including short-stay and residential accommodation</p>	<p><b>ASSESSMENT PATHWAY CAN VARY DEPENDING ON TYPE AND VALUE OF INDIVIDUAL DA</b></p> <p><b>PRIMARILY LIKELY TO BE ASSESSMENT BY LAKE MACQUARIE CITY COUNCIL</b></p> <p><b>FOR APPLICATIONS THAT TRIGGER 'REGIONAL DEVELOPMENT' THRESHOLDS, DETERMINATION BY HUNTER &amp; CENTRAL COAST JOINT REGIONAL PLANNING PANEL</b></p>
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FINAL ASSESSMENT AND DETERMINATION OF ALL DEVELOPMENT APPLICATIONS REQUIRED TO GENERALLY BE  
CONSISTENT WITH RELEVANT TERMS OF CONCEPT APPROVAL (AS MODIFIED)