

JOINT REGIONAL PLANNING PANEL
(Southern Region)

JRPP No	2011STH026
DA Number	2014.430
Proposed Development	Staged 154 berth marina, wave attenuator and piles in the waters of Cattle Bay and land based ancillary carparking, offices and amenities.
Applicant	Eden Resort Hotel Pty Ltd
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TABLE OF CONTENTS

APPENDICES	4
ASSESSMENT REPORT AND RECOMMENDATION	5
1.0 EXECUTIVE SUMMARY	5
2.0 INTRODUCTION	6
3.0 DESCRIPTION OF THE SITE AND OWNERSHIP	7
3.1 Existing Development – Land Component	9
3.2 Existing Development – Water Component	12
3.3 Surrounding Development.....	13
4.0 DESCRIPTION OF PROPOSAL	16
4.1 Design Approach – temporary buildings and on-site carparking.	17
4.2 Design Approach – Marina Development.....	18
4.3 Public Access	22
4.4 Swing Mooring Relocation.....	23
4.5 Refurbishment of Existing Wharf	23
4.6 Service Infrastructure.....	24
5.0 OTHER MARINA DEVELOPMENT	28
6.0 STRATEGIC OVERVIEW	30
6.1 NSW Coastal Policy 1997	30
6.2 The South Coast Regional Strategy 2006-2031	31
6.3 Coastal Design Guidelines.....	31
6.4 Twofold Bay and Hinterland Strategy 2004.....	32
6.5 The Eden Structure Plan Report 2006.....	33
6.6 Snug Cove and Environs Master Plan 2005 (as amended 2014)	33
6.7 Bega Valley Shire Land Use Planning Strategy 2008.....	34
7.0 STATUTORY PLANNING AND ASSESSMENT	35
7.1 Environment Protection and Biodiversity Conservation Act 1999.....	35
7.2 Threatened Species Conservation Act 1995.....	36
7.3 Environmental Planning and Assessment Act 1979	37
7.4 State Environmental Planning Policies.....	38

7.5	Bega Valley Local Environmental Plan 2013 (BVLEP 2013)	49
8.0	BEGA VALLEY DEVELOPMENT CONTROL PLAN 2013	65
9.0	BEGA VALLEY SECTION 94 AND 94A CONTRIBUTIONS PLAN 2014 ..	65
10.0	ASSESSMENT OF KEY ISSUES	67
10.1	Justification	67
10.2	Access.....	68
10.3	Biodiversity Assessment	70
10.4	Geotechnical Considerations in Construction	76
10.5	Coastal Processes.....	77
10.6	Heritage and Archaeology	79
10.7	Visual Amenity and Impact	82
10.8	Potential Air, Noise and Vibration Impacts.....	92
10.9	Navigation and Safety	97
10.10	Impacts on Aquaculture.....	99
10.11	Public Interest.....	102
11.0	PUBLIC SUBMISSIONS.....	103
11.1	Submissions in Support.....	103
11.2	Submissions in Support - Concerns Raised.....	103
11.3	Submissions Objecting.....	107
11.4	Unqualified Submission	113
11.5	General Comment.....	114
12.0	AGENCY SUBMISSIONS.....	114
12.1	Trade and Investment Crown Lands	114
12.2	Department of Defence	115
12.3	Department of Planning	115
12.4	Environment Protection Authority	116
12.5	Department of Primary Industries Fisheries NSW.....	117
12.6	Office of Environment and Heritage.....	121
12.7	Roads and Maritime Services	122
12.8	Port Authority of New South Wales.....	123

12.9	Department of Primary Industries NSW Office of Water	124
12.10	Local Land Services	124
12.11	NSW Police Marine Area Command	125
13.0	INTERNAL COUNCIL REFERRALS	125
13.1	Engineering Services	125
13.2	Environmental Services	125
13.3	Health and Building Services.....	127
14.0	CONCLUSION	130

APPENDICES

Appendix 1 Concept Approval (MP05_0032)

Appendix 2 Copy of Deposited Plan DP1128056

Appendix 3 Copy of Development Plans

Appendix 4 EIS Coastal Policy 1997 Assessment

Appendix 5 Director General's Requirements

Appendix 6 Operational Environmental Management Plan

Appendix 7 Construction Environmental Management Plan

Appendix 8 Bundian Way Walking Track

Appendix 9 Draft Development Consent

Appendix 10 Bega Valley Development Control Plan 2013 Assessment

Appendix 11 Chronology of Assessment

ASSESSMENT REPORT AND RECOMMENDATION

1.0 EXECUTIVE SUMMARY

Eden Resort Hotel Pty Ltd is the proponent for the proposed marina development.

The proponent has long had a vision to develop a marina development in association with a mixed use tourist and residential development within the former Heinz Cannery site and on adjoining lands.

The development of the cannery site and surrounding lands has been subject to a Major Project Concept Approval (05_0032) issued by the Minister for Planning on 22 August 2008. The approval has been subsequently modified on two separate occasions and is still active.

A marina development (land/water based components) did not form part of the Major Project Concept Approval issued by the Minister.

The proposal involves the staged construction of a 154 berth marina comprising three floating pontoon arms, fixed wave attenuator, refurbishment of the existing wharf, land based carparking and temporary buildings to house marina administration and toilet facilities.

The subject land (land and water) comprises the foreshore land upon which the former Heinz Cannery factory occupied, the old cannery wharf and encompasses parts of the Cattle Bay and Twofold Bay marine environs.

Access between the land and water based components of the marina would be over a public reserve created as part of the Major Project Concept Approval (05_0032) and subsequently vested in the ownership of Council through the subdivision of land.

The proposed marina development constitutes designated development for the purposes of the Environmental Planning and Assessment Act 1979 (Schedule 4A) and Environmental Planning and Assessment Regulations 2000 (Schedule 3). Accordingly, the application is to be assessed by the Bega Valley Shire Council (BVSC) and submitted to the Southern Region Joint Regional Planning Panel (SRJRPP) for consideration and determination.

The development application has been assessed in accordance with the Environmental Planning and Assessment Act 1979 (EP&A Act 1979) and relevant legislation and Council adopted Policy.

The application has been subject to two separate public consultation processes. In response, Council has received in total 25 submissions comprising:

- Six submissions in support of the proposed marina development;
- Fifteen submissions objecting to the proposed marina development;
- Three submissions supporting the marina development but raising concern: and
- One submission expressing an undecided opinion.

The application through the assessment process has also been subject to internal and external referrals to relevant State Agencies and Council Staff.

Based on the Section 79C assessment detailed in this report and the merits of the application, the proposed development is recommended for approval subject to the conditions detailed in the attached Draft Consent.

2.0 INTRODUCTION

The proposal to develop a marina in association with a mixed tourist and residential development initially commenced in 2000 with the purchase of the old Heinz Cannery site by the proponent.

A Major Project Concept Approval (05_0032) for mixed tourist and residential development was issued in August 2008. However, a marina did not form part of the application (see Appendix 1).

A planning proposal for the construction of a marina was submitted in 2010 to the Department of Planning for the Minister's consideration under Part 3A of the Environmental Planning and Assessment Act 1979.

The proposal was subsequently withdrawn by the proponent in August 2012 due to changes in planning legislation. At that time, the proponent advised the Department that an application would be prepared and lodged pursuant to Part 4 of the Environmental Planning and Assessment Act 1979.

In February 2013 the proponent sought Director General's Requirements for the construction of the now proposed marina development. The Director General's Requirements were conveyed to the proponent by letter dated 23 March 2013.

A Development Application was lodged with Council on 29 October 2014 pursuant to Part 4 of the of the Environmental Planning and Assessment Act 1979.

The application as submitted is supported by a number of technical reports addressing environmental standards and potential impacts associated with the proposed marina.

As previously advised, the Southern Region Joint Regional Planning Panel will be the determining authority for this application.

3.0 DESCRIPTION OF THE SITE AND OWNERSHIP

The site is located approximately 1 kilometre west of the Eden Town Centre on the NSW south coast. Both the land and water based components of the development are located within the Bega Valley Shire Local Government area.



Source: *Environmental Impact Statement Royal Haskoning DHV August 2014*

The site adjoins Cattle Bay Road to the east and encompasses part of Cattle Bay to the south being within the marine environs of Twofold Bay.

Advice has been received by Council from both the proponent and Crown Lands that the proponent is currently negotiating directly with Crown Lands to secure legal tenure arrangements over the waterway component inclusive of the existing wharf structure.

3.1 Existing Development – Land Component

The site (Lot 2 DP 1138056) retains a series of level concrete slabs and service conduits being remnant to the previous occupation of the land by the Heinz Cannery. There are no buildings and/or other structures on the subject land other than security fencing.



View internal to the site looking south over subject site towards Cattle Bay - Source: Bega Valley Shire Council September 2015.

Lot 4 DP 1138056 comprises an area of public reserve land immediately adjoining the foreshore. The land is characterised by concrete slabs, an old cannery building (partly demolished), service conduits, pits and sumps. Its foreshore interface is protected by a sea wall.



View internal to the site looking west over Council's public reserve and site generally – Source: Bega Valley Shire Council September 2015.



A more detailed view internal to the site looking west over Council's public reserve - Source: Bega Valley Shire Council September 2015.



View from existing wharf looking west over Cattle Bay foreshore area. Note seawall location and construction – Source: Bega Valley Shire Council September 2015.



View internal to the site looking east over Council's foreshore public reserve area towards disused cannery building – Source: Bega Valley Shire Council September 2015.



View internal to the site looking south over concrete slab area and towards Cattle Bay – Source: Bega Valley Shire Council September 2015.

With the exception of the proposed 6 metre wide access corridor, no other part of Lot 4 is to be used in association with the proposed marina development.

There is no significant vegetation on the land or habitat opportunities.

All service infrastructure is available.

3.2 Existing Development – Water Component

Approximately 7.5 hectares of the site comprises the waters of Cattle Bay surrounding the existing wharf.



View from existing wharf looking south east over the proposed water way area to the new jetty component of the marina – Source: Bega Valley Shire Council September 2015.

Approximately 24 leased swing moorings are located within the proposed marina footprint area.

Cattle Bay comprises a protected sandy beach contained between rocky headlands. The beach and the existing wharf offer significant public recreational opportunities and contribute to the amenity of surrounding residential development.

Cattle Bay's main aquatic habitats are:

- Bare sandy habitats (the beach, shallow intertidal sands and offshore sands). The sub tidal sand habitat supports shallow inshore seagrass beds or patches becoming more sparse and irregular in deeper water.
- Rock habitats (intertidal rocky shores and shallow to deep rock reefs or boulder reefs).
- Constructed habitat (wharf support piles, mooring tackle and pipelines).
- Discarded timber, tyres and metal rubbish possibly associated with the old cannery.

Cattle Bay offers habitat opportunities to a diverse range of fish, polychaete worms, molluscs and crustacean species.

Marine mammals (whales, dolphins and seals) make use of Twofold Bay, predominantly seasonal but also year round. A number of introduced marine species are also present in Twofold Bay.

Further detail is presented in Section 10.3 of this Report.

3.3 Surrounding Development

The site is surrounded by a corridor of vegetated elevated land to the north, east and west.

Areas above the vegetation corridor are predominantly characterised by low density residential development comprising a mix of one and two storey dwellings.

A number of these properties enjoy views (some expansive) out over Twofold Bay and to a lesser extent, Cattle Bay.

Cocora Beach and a commercial aquaculture (mussel) farm are to the west. Cocora Beach is a long, wide sandy beach which offers excellent recreational opportunities. It is separated from Cattle Bay by a rocky headland.



View looking north from the end of the existing wharf showing the elevated nature of the topography surrounding the development site – Source: Bega Valley Shire Council September 2015.



View looking south west from the end of the existing wharf showing Cocora Beach profile – Source: Bega Valley Shire Council September 2015.



View looking south west from Cocora Beach towards its headland and mussel farm beyond – Source: Bega Valley Shire Council September 2015.

To the east of Cattle Bay is Eden Harbour, a base for commercial fishing and other maritime activities. The foreshore between Cattle Bay and Eden Harbour is characterised by a rocky headland, gravel shoreline and rock seawalls.



View looking south-west over Cattle Bay and Cattle Bay Jetty to Cocora Beach



Rocky outcrop at the northern end of Cocora Beach separating this beach from Cattle Bay. Cattle Bay Jetty is visible in the background

Source: Environmental Impact Statement Royal Haskoning DHV August 2014



View looking west from Eden Harbour to the rocky headland and gravel beach (2012).



View of rock seawall within Eden Harbour (2012).

Source: Environmental Impact Statement Royal Haskoning DHV August 2014

4.0 DESCRIPTION OF PROPOSAL

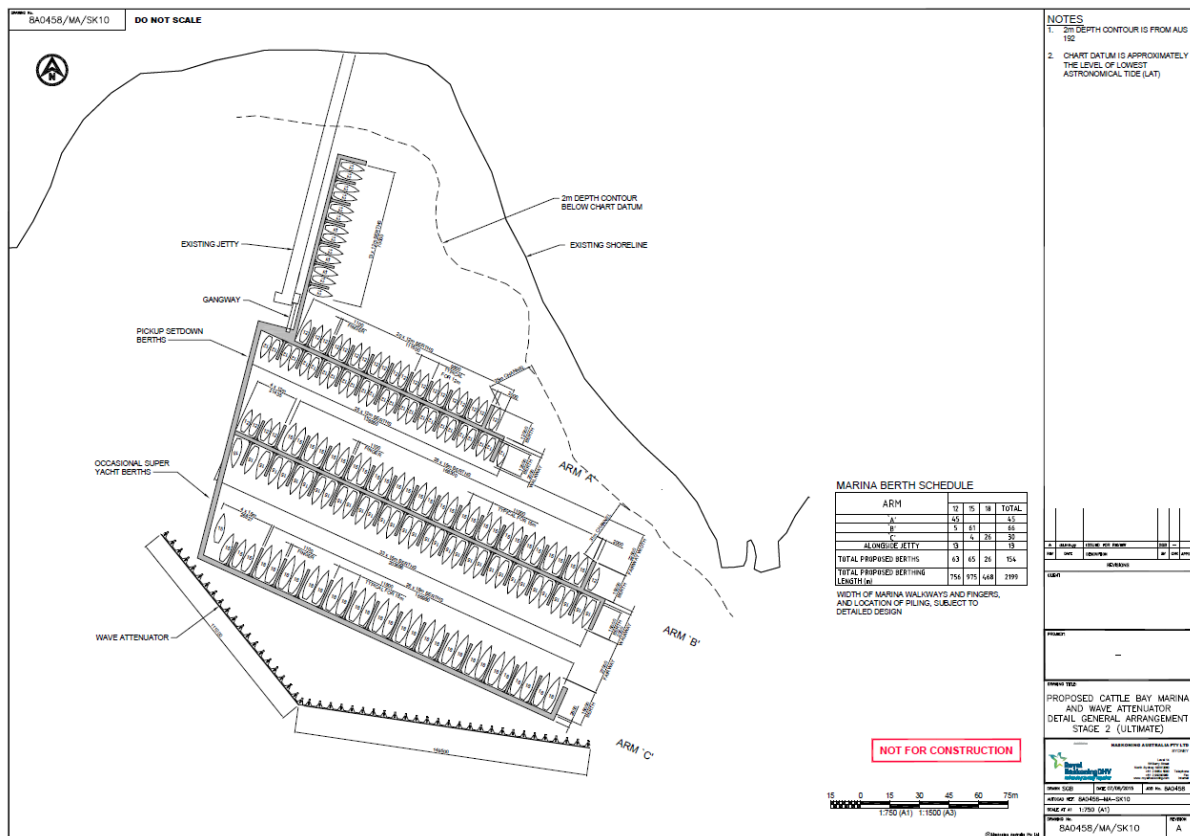
The application seeks approval for the staged construction of a marina development comprising both land and water based components.

Stage 1 comprising:

- Construction of the wave attenuator;
- Refurbishment of existing wharf;
- Marina main arm;
- Part marina berthing arms; and
- Land based facilities.

Stage 2 comprising:

- Completion of the marina berthing arms.



Source: Proposed Cattle Bay Marina Development and Wave Attenuator Stages 1 and 2 – Royal Haskoning DHV 7 August 2015

In summary, the proposal comprises:

- A total of approximately 154 berths in three floating pontoon arms restrained by piles;

- A mix of berth sizes from 12 metres to 28 metres to cater for a range of watercraft from small local recreational vessels to large international super yachts. The exact mix of berths to be determined in the preparation of final designs.
- A cranked, fixed wave attenuator immediately adjacent the southern pontoon arm of the marina;
- Refurbishment of the existing wharf;
- Provision of power, lighting, water, firefighting equipment, mobile 'muck truck' and security access controls to the pontoons and births;
- Connection to existing potable water, sewer and power supplies to service proposed temporary buildings and firefighting;
- Refurbishment and temporary use of existing stormwater drainage system incorporating the provision of a new gross pollutant trap;
- Temporary on-site carparking for 97 vehicles and 3 loading/unloading spaces. The carparking spaces would be located on, and use, the existing concrete slabs and stormwater drainage system remnant to the old cannery until such time as the land based, mixed tourist/residential development is constructed. At that time, the required on-site carparking and servicing arrangements for the marina would be incorporated into the design and construction of the land based development;
- Access to the site would be provided from Cattle Bay Road over the existing entry/exit driveway;
- A temporary (portable) building is to be located on the site to house the marina administration and toilet facilities.
- A suitable pedestrian and service vehicle access 6 metres wide is to be constructed over the existing public reserve corridor which is located immediately adjacent the foreshore. The access is required to provide linkage between the land and water based components of the marina development.
- Provision of two mobile sewage pump out "muck truck" units for sewage pump out purposes.
- Modification to an underwater rock pinnacle within the marina footprint to ensure safe navigation.

Plans of the proposed marina development are included in Appendix 3 of this report.

4.1 Design Approach – temporary buildings and on-site carparking.

Access to the site would be provided from Cattle Bay Road over the existing access driveway.

Existing concrete slab surfaces would be restored as necessary to facilitate the effective use of the area for on-site carparking and associated driveways. All driveways would be compliant with the Building Code of Australia and AS 2890.6 2009 Parking Facilities – off-street parking for people with disabilities.

All on-site carparking would be made available to marina staff, patrons and the general public.

The proposed temporary marina administration and facilities building would be located in the south-east corner of the site on an approximate building line of 35 metres to the Cattle Bay Road frontage.

The building would be located on the existing slab area and in close proximity to the proposed access corridor linking the land and water based components of the development.

The building would comprise two separate single storey ‘atco’ style buildings, structurally connected by a covered deck. Access to the building would be in accordance with AS 1428.1 2009 – Design for Access and Mobility.

4.2 Design Approach – Marina Development

The proposed marina and wave attenuator have been designed and located in accordance with Australia Standard AS 3962-2001 ‘Guidelines for Design of Marinas’ and AS 4997 – 2005 ‘Guidelines for the Design of Maritime Structures’.

The Standard sets out guidelines for the design of marinas for vessels up to 50 metres in length. It applies to fixed berth and floating pontoon marina systems, single pontoon and floating wave attenuators. Guidance is also given in relation to on-shore facilities such as dry boat storage, boat ramps and the like.

4.2.1 Floating Marina

The position and layout of the proposed marina has been influenced by a range of factors:

- Available natural water depth (avoidance of dredging);
- Connection to existing wharf (Access to the foreshore and land based components of the development)
- Incident wave climate at the site (wave height, period and direction):
- Existing navigation channel and swing basin associated with the use of Eden Harbour by commercial vessels;
- The location of the proposed Port of Eden Marina development;
- Minimum dimensions for marina berths, channels and fairways.

4.2.2 Berth Schedule

The berth schedule proposed at the site is set out below:

Berth Length (m)	Number	%
12	63	41
15	65	42
18	26	17
	154	100%

Source: Environmental Impact Statement Royal Haskoning DHV August 2014

4.2.3 Type and Layout of Berths

The proposed marina has been positioned to ensure that adequate natural water depths comply with Australia Standard AS 3962-2001 'Guidelines for Design of Marinas'. Dredging will not be required. However, an underwater rock pinnacle within the marina footprint will need be to lowered/removed to ensure safe navigation.



Underwater rock pinnacle – Source: Environmental Impact Statement Royal Haskoning DHV August 2014

The marina berths would comprise a floating system of walkways, with finger units at right angles to the walkway to create the individual berthing pens with access to the port or starboard side of the vessel.

The floating berths would be secured in place by vertical concrete piles or concrete and steel composite piles driven or potted (presence of rock) into the seabed. The

concrete and steel composite piles being required where there is an increase in water depth or where loading conditions dictate.

Intermediate mooring piles may be required to those double berths along the more exposed southern arm of the marina. The additional piles being required to aid vessel manoeuvrability and mooring security in the event of wind generated waves or boat wake, exceeding 300mm in height.

Subject to final design, walkway and finger unit widths will vary from 1 metre to 3 metres being compliant with Australia Standard AS 3962-2001 'Guidelines for Design of Marinas'.

A 30 metre section on the western side of the main north-south walkway will be designated as a pick up and set down area designed to cater for two to three vessels. This area would be mostly used by local commercial, tourist and visiting recreational vessels. The area would also be available for use by law enforcement and emergency service vessels as required.

The southern end section of the main north-south walkway would be available for occasional super yacht berthing. A nominal length of 100 metres would be provided which would cater for two to three vessels depending on vessel size.

4.2.4 Wave Attenuator

The primary purpose of the wave attenuator is to moderate ocean swells and local wind waves generated across Twofold Bay by strong winds from the south/south-west in order to provide safe mooring facilities within the marina in accordance with Australia Standard AS 3962-2001 'Guidelines for Design of Marinas' and AS 4997 – 2005 'Guidelines for the Design of Maritime Structures'.

No construction plans have been submitted as part of the current application. However, detail in the current application has confirmed that the final alignment of the attenuator is 'cranked' as opposed to that initially documented. The change in the alignment of the attenuator was considered necessary to provide a moderate wave climate for vessels moored in its lee and to minimise potential adverse environmental impacts along Cocora Beach.

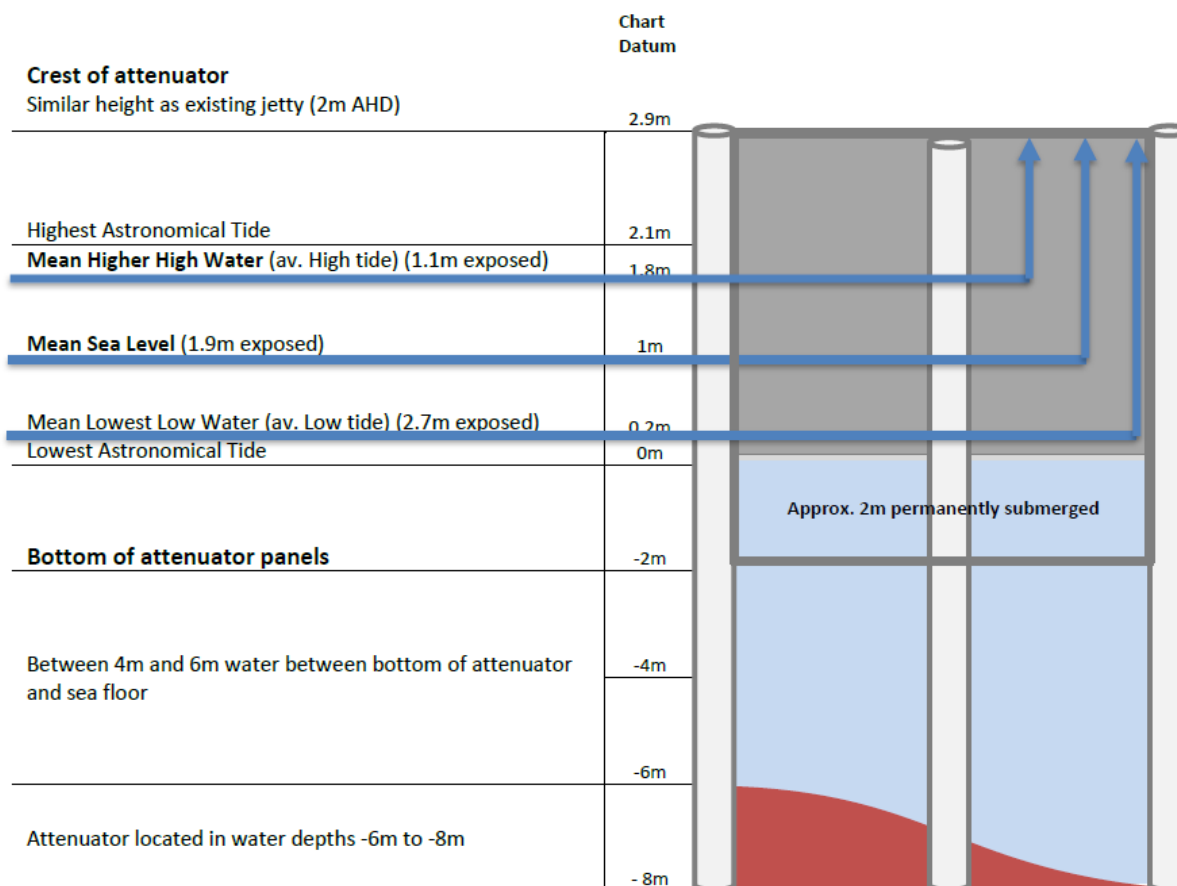
The current application provides a general overview of the design and construction methods for the attenuator. The structure would comprise a series of vertical and raked piles with an insitu or precast concrete cap, supporting precast concrete panels that span between the pile caps and extend a sufficient distance below the water level to provide the required wave attenuation performance standards.

The wave attenuator would be located in water with a depth of approximately 6-8m. The wave attenuator when constructed would have a clearance to the seabed of approximately 4-6m.

The overall approximate height of the attenuator panels would be 4.9m.

Depending on tidal variation as per the figure below the exposed section of the wave attenuator above sea level would vary from 1.1m to 2.7m.

Conceptual Diagram – Proposed wave attenuator tidal exposure



The attenuator can be readily designed for survivability against severe storm/wave events and/or sea level rise.



Photo A: Construction of fixed panel wave attenuator – showing fixed panel being lifted into place by floating crane.



Photo B: Construction of fixed panel wave attenuator – showing fixed panel being positioned onto pile caps



Photo C: View along pile caps showing fixed panels in place.



Photo D: View of completed wave attenuator and floating marina.

Example of fixed wave attenuator construction – Source: Environmental Impact Statement Royal Haskoning DHV August 2014

4.3 Public Access

A pedestrian and service vehicle access 6 metres wide is to be constructed over the existing public reserve to provide a linkage between the land and water based components of the marina development.

Access across all elements of the marina would be designed and constructed in accordance with the Building Code of Australia and relevant Australian Standards.

Public access over Council's public reserve (Lot 4 DP 1138056) and foreshore area to Cattle Bay would be maintained at all times.

There is no lawful public access to the existing wharf at the present time. Public access is to be formalised given its new role and it's recreational and tourism potential. However, any formal access arrangement would be managed by the marina operator in the interests of safety and security.

Advice has been received by Council from both the proponent and Crown Lands that the proponent is currently negotiating directly with Crown Lands for the purpose of securing legal tenure arrangements by way of lease over the waterway component inclusive of the existing wharf structure.

Public access to the marina would be made available during normal day light hours throughout the year. An access security gate would be installed at the head of the access gangway leading to the floating component of the marina. The gate would be locked at night to preclude public access.

After hours access for boat owners and marina staff would be provided by the use of a security key card system.

4.4 Swing Mooring Relocation

There are approximately 40 swing moorings in Cattle Bay and Snug Cove. Approximately 24 of these mooring will need to be relocated in order to accommodate the proposed marina and wave attenuator.

There are options available to relocate the affected moorings which will need to be fully investigated in consultation with affected licence holders, the proponent and relevant State Agencies.

Currently, existing moorings are under licence issued by Roads and Maritime Services.

A swing mooring relocation strategy will need to be prepared separate to this application for endorsement by NSW Trade and Investment – Crown Lands, Roads and Maritime Services and affected lease holders.

4.5 Refurbishment of Existing Wharf

The existing wharf is to be retained. To ensure its safe and effective use, its structure is to be refurbished involving the replacement of piles, headstocks and girders and decking as part of the proposed marina development.



Existing wharf – Source: Environmental Impact Statement Royal Haskoning DHV August 2014

A detailed condition report and underwater inspection would be required as part of the finalisation of the refurbishment scope of works.

Ongoing maintenance of the wharf would be undertaken as required and in accordance with any subsequent lease agreement with NSW Trade and Investment – Crown Lands.

4.6 Service Infrastructure

Subject to design and construction, all public utility services are available to both the land and water based components of the proposed marina development.

The supply of fuel would not be available at the marina. Vessel re-fuelling facilities are available from existing suppliers in Eden Harbour.

4.6.1 Lighting, Potable Water, Power and Communications

These services would be provided to both the land and water based components of the marina in accordance with the requirements of the relevant authorities.

Services would be made available to individual marina berths by low height (approximately 900mm) service pedestals. The service pedestals would be strategically located along the floating arms of the marina.

4.6.2 Fire Fighting

Fire fighting capability would be provided in accordance with Australia Standard AS 3962-2001 'Guidelines for Design of Marinas'.

The equipment would include a fire hydrant, hose reels and extinguishers.

A fire hydrant would be installed at the end of the existing wharf at its junction with the new floating marina component. The hydrant would have its own water supply service from Council's reticulated water main infrastructure in Cattle Bay Road.

Fire hose reels would also be serviced from Council's reticulated water main infrastructure but separate to the hydrant service.

Extinguishers would be strategically located and would be selected on the basis of suitability of fighting fire hazards which are not capable of being contained by water.

4.6.3 Sewage Pump Out

Sewage is proposed to be removed from the holding tanks of vessels at the marina berth and disposed of to an on-land sewerage system by means of two 90 litre mobile sewage pump out units (Muck Trucks).

The operation of the Muck Truck involves:

- The trolley is wheeled to the required point adjacent to the vessel and a flexible discharge hose is attached to the holding tank on the vessel;
- The unit is connected to the power supply at the service pedestal. The pump out unit is also fitted with a battery backup in the event of a power failure;
- The pump evacuates the sewage from the vessels holding tank into the mobile unit (90 litre capacity) which would accommodate the majority of vessels permanently moored at the marina. The unit is fitted with an automatic tank overfill protection which shuts the pump off should the holding tank of the vessel exceed the size of the pump out unit.
- The mobile unit is wheeled to an on-land connection point for discharge to Council's reticulated sewage system.
- The muck truck would be operated by suitably skilled marina staff.
- A minimum of two muck trucks would be deployed at the marina.

Mobile sewage pump out systems are widely and successfully used in marina developments nationwide. They do not rely on the vessel's owner accessing a static dedicated berthing area and pump out facility at the marina. It enables the marina operator to be more proactive in compliance with operational standards of any subsequent environmental protection licence and operational environmental management plan.



Example of Muck Truck – Source: Environmental Impact Statement Royal Haskoning DHV August 2014

4.6.4 Bilge Water Pump Out

All marina berth tenants would be inducted in the use of and supplied with, a bilge water absorbing pad as part of the marina's operational standards. The pad(s) will effectively absorb water and oil from the bilge of the vessel.

The pad would then be disposed of by way of a certified collection agent.

The direct discharge of bilge water within the berthing area would be prohibited under the marina's operational standards. Appropriate signage would be displayed at the marina.

A floating boom would be maintained at the marina for the purpose of spill containment and treatment.

4.6.5 Site Preparation and Construction Overview

Construction activities would involve a variety of different types of construction methods and equipment. The principle activities would comprise:

- the erection of temporary building;
- refurbishment of the existing wharf;
- removal of swing moorings;
- installation of piles and pontoons;
- Installation of gangways and services.

A construction program of approximately 16 weeks is proposed with piling taking place over an 8 week period.

Construction hours would be restricted to:

- Monday to Friday 7.30am to 5.00pm
- Saturday 7.30am to 1.00pm
- No work on Sundays or Public Holidays

Wharf refurbishment

The extent of the work required to refurbish the existing wharf would become more apparent following a detailed structural investigation. Timber piles to be removed or secured would be dealt with in a controlled manner. A turbidity control barrier would be deployed and maintained during the process.

Materials recovered may be suitable for re-cycling off-site. Unsuitable materials would be removed and transported to an authorised waste disposal facility.

Work would most likely to be carried out by barge mounted crane, transport barge, work boats and hand held power tools.

Pile transportation and installation

All piles would be delivered to the site by barge and installed from the water using a piling barge. A turbidity control barrier would be deployed and maintained during the process.

Installation of pontoons

The pontoon units would be manufactured off-site and transported to the site by road, then launched from the Eden harbour by crane and towed and guided into their correct position using GPS technology.

5.0 OTHER MARINA DEVELOPMENT

Currently there are no marina developments located within Eden or Twofold Bay. However, there are two planned marinas which have reached different stages in design and development being the Boydtown Marina Development and the Port of Eden Marina proposal (POEM).



Geographical locations of Boydtown Marina and POEM developments in context with Cattle Bay Marina proposal – Source: Environmental Impact Statement Royal Haskoning DHV August 2014

- The Boydtown Marina proposal, eight kilometres to the south west of Eden.

The marina proposal is linked to the development of a residential estate at Boydtown.

The proposal secured development approval from the Minister of Planning (DA 89.1440) in November 1990 and has been physically commenced to the satisfaction of the Department of Planning.

In summary it comprises:

- The construction of break walls to form an artificial harbour;
 - Timber jetty;
 - Sheltered water harbour mooring – 40 vessels;
 - 250 wet berths;
 - Fuelling berths, sewerage and bilge pump out facilities and firefighting facilities;
 - Repair and maintenance facilities;
 - Dry storage facilities – 100 vessels;
 - Boat launching facilities and associated carparking; and
 - Marine village including general store, shops and offices.
- The Port of Eden Marina (POEM) is proposed to be located immediately to the south east of the Cattle Bay Marina Site.

The marina development is proposed by a consortium of local interest groups, Government Agencies and other stakeholders for the purpose of securing government funding for additional marina development in Eden.

In summary, it comprises two stages:

- Stage 1: Reclamation of a portion of the northern foreshore to Snug Cove to establish a 98 berth marina incorporating a wave attenuator, floating structures, piling and services, marina amenities/administration building, pump out facility and associated 85 car parking spaces; and
- Stage 2: Additional 95 floating births and additional carparking spaces.

There is no development application currently lodged for the proposed development.

6.0 STRATEGIC OVERVIEW

There are a number of State and Council strategic policies which have relevance in the assessment and determination of the current application. They comprise:

- NSW Coastal Policy 1997;
- The South Coast Regional Strategy;
- Coastal Design Guidelines
- Twofold Bay and Hinterlands Strategy 2004;
- The Eden Structure Plan Report 2006;
- Snug Cove and Environs Master Plan 2005; and
- Bega Valley Shire Land Use Planning Strategy 2008

6.1 NSW Coastal Policy 1997

The Policy is a comprehensive goals oriented policy, designed to guide coastal zone management and planning. The Policy embraces the Principles of Ecologically Sustainable Development and contains a number of key strategic objectives and actions designed to:

- Protect, rehabilitate and improve the natural environment;
- Recognise and accommodate natural processes and climate change;
- Protect and enhance the aesthetic qualities of the coastal zone;
- Protect and preserve cultural heritage;
- Promote ecologically sustainable development and use of resources;
- Provide for ecologically sustainable human resources;
- Provide appropriate public access and use;
- Provide information to enable effective management; and
- Provide for integrated planning and management.

The EIS process has addressed the Policy in detail (see Appendix 4).

Comment

It is considered that the proposed marina development would not be inconsistent with the strategic role of the Policy and its stated objectives and actions as relevant.

6.2 The South Coast Regional Strategy 2006-2031

The South Coast Regional Strategy was prepared by the NSW Department of Planning to guide future development, infrastructure and natural resource protection requirements for the south coast region to 2031. The Strategy is specific to the Shoalhaven, Eurobodalla and Bega Valley Council areas.

The primary purpose of the Strategy is to ensure that adequate land is available and appropriately located to accommodate the projected future housing and employment needs of the region. The Strategy acknowledges that a balanced integrated approach is required and lists several key considerations to ensure sustainable growth within the region. Those being:

- The protection of the natural environment;
- Identification of natural hazards;
- Housing and settlement;
- Economic development and employment growth;
- Rural landscapes and communities;
- Water, energy and waste resources; and
- Cultural heritage.

Comment

It is considered that the proposed marina development would not be inconsistent with the strategic role of the Policy and its stated outcomes and actions.

6.3 Coastal Design Guidelines

The Guidelines consider the NSW coast in terms of a hierarchy of settlements and provides a framework for analysing and understanding the importance of relationships between settlements, natural areas and reserves.

The Key Objectives of the Guidelines are:

- To protect and enhance the cultural, ecological and visual characteristics of the locality;
- To limit coastal sprawl by establishing separation and greenbelts between settlements;
- To integrate new development with surrounding land uses;
- To integrate land use with transport;
- To protect local character;
- To encourage new coastal settlements to be appropriately located; and

- To create neighbourhoods centred around services and facilities.

Under the Guidelines, Eden would be classed as a 'Coastal Town'

Comment

It is considered that the proposed marina development would not be inconsistent with the strategic role of the Guidelines on the basis that:

- It would be integrated into a mixed tourist and residential development endorsed by a Major Project Concept Approval (05_0032).
- The maritime nature and scope of the development and its presence would be in keeping with the natural and manmade environs and Eden's maritime heritage.
- Its ecological footprint would be manageable and sustainable.
- Cultural heritage and significance would be acknowledged and respected.
- It would not contribute to coastal sprawl, being located within Eden's established township.
- It would be complementary to the Port of Eden and its role as a working port.
- It would create and maintain public access across the foreshore (inclusive of the existing wharf) and would contribute to both active and passive recreational opportunities within Eden.
- It would utilise the existing local road network requiring minor upgrades and improvements.
- It would contribute to Eden's residential lifestyle and tourism opportunities.

6.4 Twofold Bay and Hinterland Strategy 2004

The Strategy has been prepared by the Department of Infrastructure, Planning and Natural Resources and identified a series of objectives and actions for implementation for the purpose of ensuring:

- The provision of infrastructure to meet the social, educational, employment and cultural needs of the community and tourists alike;
- A healthy environment that is biologically diverse, maintains ecological processes and is resilient in the interest of the local community and tourists alike;
- A community which is fully informed and committed to the decision making and management process; and
- A viable community that enjoys a quality of life based on a lasting balance between environmental, social and economic influences.

Comment

The Strategy, in part, identifies an action to investigate the construction of boating facilities at Quarantine Bay, Cattle Bay, Ross Bay and Boydtown.

It is considered that the proposed marina development would not be inconsistent with the strategic role of the Policy and its objectives.

6.5 The Eden Structure Plan Report 2006

The Plan stems from the findings of the Twofold Bay and Hinterland Strategy 2004.

The Plan is Council's response to those Strategies as relevant to land use planning initiatives and outcomes for Eden. The Plan was adopted in the formulation of Council's current Bega Valley Local Environmental Plan 2013.

Comment

It is considered that the proposed marina development is not inconsistent with the objectives and actions contained within the Plan as it would:

- Be consistent with the desired future character direction for Eden as a harbour town;
- Complement existing marine activities and tourism opportunities;
- Improve passive and active recreational opportunities and public access to the foreshore;
- Be in keeping with the environmental integrity and natural scenic qualities of Twofold Bay given its coastal environment and maritime heritage.
- Contribute to the economic fabric of Eden whilst acknowledging the social, cultural and environmental expectations of the local community.
- Be complementary to the built form of foreshore development in the immediate area.

6.6 Snug Cove and Environs Master Plan 2005 (as amended 2014)

The area identified in the Master Plan specifically excludes Cattle Bay from any site specific investigation. However, the Plan acknowledges the presence of Cattle Bay in the Snug Cove environs and its potential to contribute to the importance of Snug Cove as a working port facility.

On that basis, Cattle Bay has been identified under the Plan as a "Future marine use investigation area".

The Plan outlines a "future character statement" for Cattle Bay as follows:

"The protection and management of vegetation, water quality and coastal processes require particular consideration as part of the future development of the site at Cattle Bay. Visual impacts associated with developing the cattle bay

site also require consideration due to its prominence when viewed from Twofold Bay.

The Former cannery site is potentially suitable for a range of future uses, including tourism, residential, commercial and marine-related industrial development. Due to its proximity to Eden's commercial centre, Snug Cove and Imlay Street a principal outcome of future development at this site should be that it promotes employment generation. When the site is developed, a new public park adjacent to Cattle Bay beach should be established to allow enjoyment of and access to the foreshores. Informal pathways between beaches and streets may be developed but only where they do not require significant vegetation clearance or land forming, otherwise pathways should be located adjacent to existing streets. A new pathway between Imlay street and Cattle Bay Road will provide easy pedestrian access to the site and foreshore park."

Comment

It is considered that the proposed marina development would be a compatible use that satisfies the desired future character statement for Cattle Bay through:

- The maritime nature and scope of the development and its presence within the natural and manmade environs;
- Compatibility with Eden's maritime heritage;
- The provision, improvement and maintenance of public access to the foreshore;
- Its compatibility with and potential contribution to Snug Cove as a working port;
- Its potential short and long term social and economic benefits to the Town of Eden and Bega Valley;

6.7 Bega Valley Shire Land Use Planning Strategy 2008

The Strategy was prepared as a summary of the planning research and background to the formulation and eventual adoption of the Bega Valley Local Environmental Plan 2013 and the Bega Valley Development Control Plan 2013.

As it related to Eden, the Strategy notes its emerging tourist focus and the importance of its Port and harbour facilities, aquaculture and related industries. The Strategy also recognises that Eden has economic challenges in replacing lost unskilled and semi-skilled employment opportunities.

Comment

The proposed marina development is generally supportive of the expectations and directions of the Strategy in that:

- As a major new development, it is located within the Eden Township and has access to necessary service and community infrastructure.

- It would have important social and economic and recreational benefits for the town;
- The nature and extent of the marina development would have minimal impact on environmental integrity through contemporary engineering and management best practice;
- It would be compatible with Eden's maritime heritage whilst acknowledging and respecting local Aboriginal cultural heritage.

7.0 STATUTORY PLANNING AND ASSESSMENT

The proposal has been assessed in accordance with the Matters for Consideration under Section 5A and Section 79C of the Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2000.

Legislative Framework

The legislative frame applicable to the assessment and determination of the current application is as follows:

7.1 Environment Protection and Biodiversity Conservation Act 1999

The EPBC Act enables a national scheme of environment and heritage protection and biodiversity conservation. The Act focuses on the protection of matters of national environmental significance.

The Objectives of the Act are to:

- Provide for the protection of the environment, especially matters of national environmental significance.
- Conserve Australian biodiversity.
- Provide a streamline national environmental assessment and approvals process.
- Enhance the protection and management of important natural and cultural places.
- Control the international movement of plants and animals (wildlife), wildlife specimens and products made or derived from wildlife.
- Promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources.
- Recognise the role of Indigenous people in the conservation and ecological sustainable use of Australia's biodiversity.
- Promote the use of Indigenous people's knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge.

The EIS has acknowledged that past and present investigations and reporting have established that the development site (land and water based components of the proposed marina) and surrounding areas either support or have the potential to support the existence of a number of listed threatened species and habitat opportunities.

The EIS has also recognised the importance of Aboriginal culture and heritage.

The EIS concludes that with appropriate mitigation actions being implemented during the construction and operational phases of the development, any potential impact can be managed.

Comment

It is considered that with appropriate mitigation measures being written into any subsequent Construction Environmental Management Plan and Operational Environmental Management Plan, the Objectives of the Act would be met.

Separate approvals under the Environmental Protection and Biodiversity Conservation Act are not considered to be required.

See Section 10.3 of this Report.

7.2 Threatened Species Conservation Act 1995

The Act identifies and protects threatened, endangered species, populations, ecological communities and habitat. It requires the preparation of a Species Impact Statement where development is of a kind which is likely to have a significant impact on the life cycle, extent and habitat of the species.

The Act requires the issue of a licence (Office of Environment and Heritage) to harm threatened species, populations or ecological communities unless authorised by the issue of development consent pursuant to part 4 of the Environmental Planning and Assessment Act 1979.

The Objectives of the Act are:

- to conserve biological diversity and promote ecologically sustainable development, and
- to prevent the extinction and promote the recovery of threatened species, populations and ecological communities, and
- to protect the critical habitat of those threatened species, populations and ecological communities that are endangered, and
- to eliminate or manage certain processes that threaten the survival or evolutionary development of threatened species, populations and ecological communities, and
- to ensure that the impact of any action affecting threatened species, populations and ecological communities is properly assessed, and

- to encourage the conservation of threatened species, populations and ecological communities by the adoption of measures involving co-operative management.

The EIS is supported by a number of technical reports which collectively address the potential impact of the proposed marina development on threatened fauna and flora being:

- Cattle Bay Marina Project EIS Aquatic Ecology Assessment – Marine Pollution Research Pty Ltd May 2013.

Note: This Report Includes an ecology literature review which references 10 specific reports and studies undertaken by various bodies and agencies from 1992 to 2013.

- Cattle Bay Marina Hydrographic Mapping and Marine Mammal Risk Profiles – Ocean Environmental Consulting July 2014.
- Cattle Bay Marina Responses to Agency Submissions Relating to Aquatic Ecology – Ocean Environmental Consulting March 2015
- Cattle Bay Marina Responses to Agency Submissions Relating to Aquatic Ecology #2 – Ocean Environmental Consulting June 2015

The EIS has acknowledged that past and more recent investigations and reporting have established that the development site (land and water based components of the proposed marina) and surrounding areas either support or have the potential to support the existence of a number of listed threatened species and habitat opportunities.

The EIS concludes that with appropriate mitigation actions being implemented during the construction and operational phases of the development, any potential impact can be managed.

Comment

Upon full assessment and review it is considered that the documentation submitted in support of the EIS fully quantifies and addresses the potential impacts of the proposed marina development on known listed threatened, populations and ecological communities. A Species Impact Statement is not deemed to be required.

It is considered that with appropriate mitigation measures being written into any subsequent Construction Environmental Management Plan and Operational Environmental Management Plan, the Objectives of the Act would be met.

See Section 10.3 of this Report.

7.3 Environmental Planning and Assessment Act 1979

Pursuant to Section 77A of the Act and Schedule 3 of the Environmental Planning and Assessment Regulations 2000, the proposed marina development constitutes designated development as it falls within the scope of:

“Marinas or other related land or water shoreline facilities that moor, park or store vessels (excluding rowing boats, dinghies or other small craft) at fixed or floating berths, at freestanding moorings, alongside jetties or pontoons, within dry storage stacks or on cradles on hard stand areas:

(c) that have an intended capacity of 80 or more vessels of any size.”

Section 79C(1) – Evaluation

Pursuant to Section 79C(1)(a)(iv), the proposed marina development has been assessed in accordance with the relevant sections of the Environmental Planning and Assessment Regulation 2000.

Pursuant to Section 79C(1)(a)(v) the site is not located within an adopted coastal zone management plan as identified under the Coastal Protection Act 1979.

However, as a first step in the development of a coastal zone management plan, Council has prepared a Draft Coastal Processes and Hazard Definition Study for the Shire’s coastline. The Study takes a risk management approach to the delineation of hazard lines for the current 2050 and 2100 planning horizons. The risk lines are presented for each time horizon, “most certain”, “unlikely” and “rare”. For each of the 3 planning horizons, the Study has not predicted any foreshore erosion or recession due to the presence of an existing seawall and the protected location of the site within Twofold Bay.

The primary coastal hazard to impact the marina would be storm waves, the impact of which has been extensively addressed by the EIS process.

The provisions of Sections 79C(1)(b), (c), (d) and (e) will be addressed through the body of this report:

Section 91- Integrated Development

Pursuant to Section 91 of the Act, the application constitutes “integrated development” with relevant approvals required from the Environment Protection Authority under the Protection of the Environment Operations Act 1997 and the Department of Primary Industries under the Fisheries Management Act 1994. Both these Authorities have been notified through the course of assessment. Their comments and their General Terms of Approval are attached.

See Section 12 of this Report.

7.4 State Environmental Planning Policies

State Environmental Planning Policy (State and Regional Development) 2011

SEPP (State and regional Development) 2011 applies to the whole the state. The third aim of the SEPP is to “confer functions on joint regional planning panels to determine development applications”.

In accordance with the provisions (Part 4 Regional Development) of the SEPP, the Southern Region Joint Regional Planning Panel is the determining authority for this development application.

State Environmental Planning Policy 14 (Wetlands) 1985

SEPP14 applies to the whole of the state. There are no SEPP 14 wetlands located on the site or within the immediate area.

State Environmental Planning Policy 33 (Hazardous and Offensive Developments) 1992

State Environmental Planning Policy No. 33 – “Hazardous and Offensive Development” is an enabling instrument that aims to ensure the merits of a proposal are properly assessed prior to determination.

The Policy identifies potentially hazardous and offensive development and provides for risk threshold screening and preliminary hazard analysis to determine site suitability and potential impacts.

On the assessment of the application, Council staff have concluded that both the land and water based components of the proposed marina development would not comprise any hazardous or potentially hazardous land use activity as defined by the Policy.

State Environmental Planning Policy 44 (Koala Habitat Protection) 1995

SEPP 44 applies to the whole of the State and applies to land having an area more than 1 hectare or has, together with any adjoining land in the same ownership, an area of more than 1 hectare.

The land based component of the marina development has an area of 1.66 hectares.

With the exception of small pockets of native vegetation adjacent the north western and south western boundaries of the land, the site is void of any vegetation of worth.

The remaining pockets of native vegetation have not been identified as ‘potential Koala habitat’ as defined by the Policy.

State Environmental Planning Policy 55 (Remediation of Land) 1998

The Policy applies to the whole of the state. Clause 7 details when contamination and remediation are to be considered in the determination of a development application.

Clause 7 states;

- “ (1) A consent authority must not consent to the carrying out of any development on land unless:*
 - (a) it has considered whether the land is contaminated, and*
 - (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
-

- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose."*

The EIS has acknowledged that the potential for site contamination was extensively investigated and reported on in the assessment and determination of the Major Project Concept Approval (05_0032).

The Concept Approval identifies that some site remediation would be necessary in accordance with the recommendations contained within the report prepared by Aargus dated June 2007 entitled 'Environmental Site Assessment'.

The current application does not involve the residential development of the land and only minimum site disturbance is proposed with the erection of the proposed management buildings and maintenance of carpark areas associated with the proposed marina development.

This issue is addressed in more detail in Section 4 of Appendix 10 to this report.

State Environmental Planning Policy 71 (Coastal Protection) 2002

The Policy applies to the development. The clauses of the Policy relevant to the assessment of the proposed development are outlined below, with comments provided.

Standard	Comment
Clause 2 - Aims of Policy	
(a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and	<p>The proposed marina development would be located immediately adjacent to the Cattle Bay foreshore being within the marine environs of Twofold Bay.</p> <p>The potential impact of the proposed marina development on the natural, cultural, recreational and economic attributes have been assessed in the preparation of the EIS</p> <p>It is considered that the proposed development would be consistent with the Policy given that:</p> <ul style="list-style-type: none"> • The proposal would be in keeping with the character of the foreshore and the marine environments of Two Fold Bay. • The cultural and heritage importance of Cattle Bay, Cocora Beach and the Bundian Way project has been acknowledged in the preparation of the EIS and the design of the proposed marina development. • Recreational opportunities would be established and embellished where existing. • The proposal would establish economic opportunities over the short and long term.
(b) to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and	<p>The land component comprises Lots 2 and part Lot 4 DP 1138056. Lot 4 has been dedicated in subdivision as public reserve and is vested in Council's ownership. The dedication of the public reserve originated from the Major Project Concept Approval (05_0032).</p> <p>As part of the proposed marina development, a 6 metre wide access for pedestrians and</p>

	service vehicles is proposed over the reserve, however any lease agreement would not preclude or restrict public access.
(c) to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and	As above
(d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and	<p>The EIS process relies on past investigations undertaken by the proponent's consultants South East Archaeology in 2008 in support of the mixed tourist and residential development endorsed under the Major Project Concept Approval (05_0032).</p> <p>No additional investigations have been undertaken to supplement the earlier reporting.</p> <p>The EIS has acknowledged past comments received from the Eden Local Aboriginal Land Council relating to the importance of the Bundian Way.</p> <p>A more detailed assessment is provided in Section 10.6 of this Report.</p>
(e) to ensure that the visual amenity of the coast is protected, and	<p>The visual amenity of Cattle Bay and adjoining foreshore areas would change with the construction of the proposed marina development. It is considered that its maritime presence would not be out of character with the marine environment and/or foreshore development in the locality.</p> <p>See Section 10.7 of this Report</p>
(f) to protect and preserve beach environments and beach amenity, and	<p>The EIS has addressed this issue in detail.</p> <p>The construction of the wave attenuator would result in minor changes over time to the foreshore character/alignment of Cattle Bay and Cocora Beach.</p> <p>In both cases, it is considered that the beach environment and amenity would not be adversely affected.</p> <p>See Section 10.5 of this Report</p>
(g) to protect and preserve native coastal vegetation, and	The proposal does not include the removal of coastal vegetation.

<p>(h) to protect and preserve the marine environment of New South Wales, and</p>	<p>The EIS has addressed this issue in detail.</p> <p>The site is not located within a park as identified by the Marine Parks Authority.</p> <p>The EIS concludes that aquatic ecology can be ensured during the construction and operational stages of the proposed marina provided detailed construction and operational environmental management plans are prepared, adopted and implemented.</p>
<p>(i) to protect and preserve rock platforms, and</p>	<p>Cattle Bay comprises a protected sandy beach contained between rocky headlands.</p> <p>A main component of Cattle Bay's aquatic habitat comprises intertidal rocky shores and shallow to deep rock reefs or boulder reefs.</p> <p>The design of the proposed marina acknowledges the presence of habitat and its environmental integrity. However, an underwater rock pinnacle within the marina footprint will need be to lowered/removed to ensure safe navigation. The work is considered minor having little impact.</p>
<p>(j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of Section 6 (2) of the Protection of the Environment Administration Act 1991), and</p>	<p>There is little opportunity to adopt measures to incorporate ESD principles into the design, construction and operation of the proposed marina due to the limited scope of works and operational activities.</p> <p>The ongoing operation of the marina can adopt a number of measures that reduce its environmental footprint such as recycling and reduction in water and energy consumption.</p> <p>The preparation, adoption and implementation of a water, waste and energy plan would help achieve a reasonable level of sustainability. Such a plan could form part of any subsequent construction or operational environmental management plan.</p> <p>See Section 3 of Appendix 10 to this report</p>
<p>(k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the</p>	<p>Both the land and water based components of the proposed marina have been sited and designed in context with the environmental integrity of Twofold Bay and its maritime</p>

surrounding area, and	heritage.
(l) to encourage a strategic approach to coastal management.	It is considered that the proposed marina development is consistent with State and Council strategic policies which have relevance.
Clause 8 - Matters for consideration The matters for consideration are the following:	
(a) the aims of this Policy as set out in clause 2,	As discussed in addressing the Aims of the Policy.
(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,	As discussed in addressing the Aims of the Policy.
(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,	As discussed in addressing the Aims of the Policy.
(d) the suitability of development given its type, location and design and its <i>relationship with the surrounding area</i> ,	The proposed marina development given its maritime nature, siting and design would complement existing foreshore development, the waterways of Twofold Bay and surrounding lands.
(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,	<p>Whilst there would be a visual change in the character of the area generally, established view corridors enjoyed by adjoining and adjacent residential properties would not be adversely affected.</p> <p>Overshadowing of Cattle Bay Beach and the adjoining public reserve would not occur. The exception being, the existing jetty which is to be retained as part of the proposed marina development. The shadow cast by the jetty would fall on the beach.</p> <p>There would be no impact on existing recreational opportunities currently enjoyed by the general public. It is to be noted, that there is no lawful public access to the existing jetty at the present time. The proposed marina development would</p>

	<p>establish lawful public access to the jetty.</p> <p>The acoustic amenity of the area would change during the construction stage and ongoing operation of the proposed marina.</p> <p>It is considered that any impact would be minor and manageable through the preparation, adoption and implementation of detailed construction and operational environmental management plans.</p> <p>See Section 10.8 of the Report.</p>
(f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,	<p>The proposed development would be visible from both public and private locations along the coast, within and around Twofold Bay.</p> <p>The visual amenity of Cattle Bay and adjoining foreshore areas would change with the construction and operation of the proposed marina development. However it is considered that a marina would not be out of character with the marine environment and/or foreshore development in the locality.</p> <p>See Section 10.7 of this Report.</p>
(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,	<p>The EIS has identified and evaluated the construction and operational impacts of the proposed marina development.</p> <p>Council staff and the Office of Environment and Heritage have reviewed the EIS and supplementary supporting documentation and concluded that the biodiversity impacts have been adequately quantified and with appropriate mitigation measures (as detailed in required Construction and Operational Environmental Management Plans), the land and water based components of the proposed marina development would not have a significant impact on biodiversity.</p> <p>See Section 10.3 of this Report.</p>
(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	<p>Department of Primary Industries - Fisheries NSW has advised that the EIS and supplementary supporting documentation addresses most, but not all, of the issues relating to construction and ongoing operation of the proposed marina development and the potential impact on</p>

	<p>aquatic habitat, fish communities, aquaculture industry and access for recreational fishers in Twofold Bay.</p> <p>Notwithstanding, the Department has advised that it is prepared to issue, subject to specific conditions, a 'Harm Marine Vegetation Permit' to enable the construction of the marina.</p> <p>The Department has also recommended specific amendments to the Construction and Operational Environmental Management Plans for the project.</p> <p>The Department's response will be addressed in more detail later in this report. See Section 12.5 for additional detail.</p>
(i) existing wildlife corridors and the impact of development on these corridors,	<p>It is considered that the land based component of the proposed marina development would not compromise the worth of the existing vegetation/wildlife corridors located adjacent the north western and south western boundaries of the subject.</p> <p>These corridors extend through the subject land and interconnect with similar habitat on adjoining and adjacent lands held under separate ownership (public and private).</p> <p>The corridors on the subject land would be retained as managed private open space should the Major Project Concept Approval (05_0032) come to fruition.</p>
(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,	<p>The proposed marina development would be exposed to and would influence coastal processes. In response, the EIS quantifies the potential impacts associated with:</p> <ul style="list-style-type: none"> • Wave climate (local wind generated waves and ocean swells). • Elevated water levels (climate change). • Water movement patterns. • Sediment movement and shoreline stability. <p>It is considered that the influence of coastal processes has been adequately investigated</p>

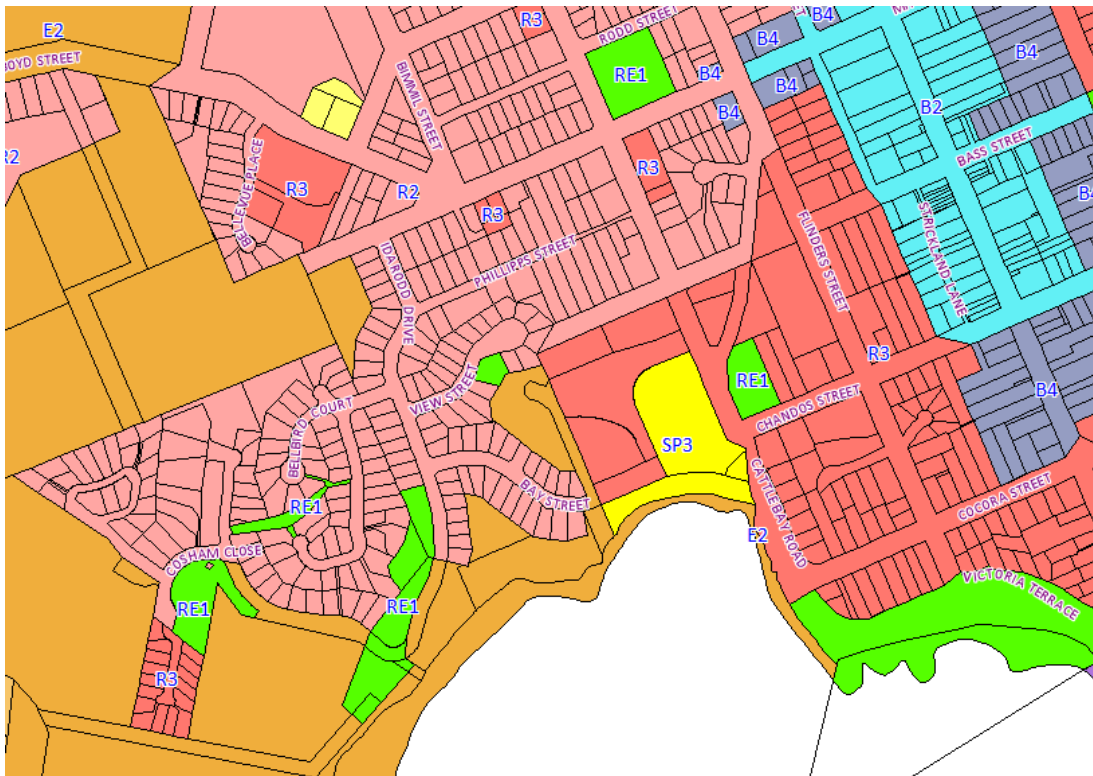
	<p>and that potential impacts would be minor and/or mitigated through siting and design and management practises during construction and operation.</p> <p>See Sections 4 of Appendix 10, 10.4 and 10.5 of this Report for additional detail.</p>
(k) measures to reduce the potential for conflict between land-based and water-based coastal activities,	<p>The proposed marina development would require the relocation of approximately 24 existing swing moorings order to accommodate the proposed marina and wave attenuator.</p> <p>This is a matter for Crown Lands as the land owner.</p>
(l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,	See Aims of the Policy
(m) likely impacts of development on the water quality of coastal waterbodies,	<p>The construction and operation of the proposed marina would have potential impacts on water quality.</p> <p>The EIS is supported by a Water Quality Management Plan. The Plan has quantified potential impacts associated with:</p> <ul style="list-style-type: none"> • Sediment plumes caused by pile driving activities or by the anchoring or movement of construction vessels. • Spills of fuel and other harmful substances from construction vessels. • Pollution of the waterway with general waste. • Toxic impacts of fuel spills on nearby aquaculture enterprises. • Stormwater runoff from hard surfaces such as carparks. • Washing of vessels • Illegal discharge from vessel holding tanks • Accidental spillage of bilge water, sewage and grey water

	<ul style="list-style-type: none"> • Fuel and substance spillages. • Increased copper in water column from anti-foul ablation. • Pollution of the waterway by general waste. • Toxic impacts of fuel, sewage spillages and antifouling on nearby aquaculture enterprises. <p>In recognition of the above, the Plan makes specific recommendations in relation to water quality management and/or mitigation measures to be employed in the construction and operation of the proposed marina.</p> <p>It is considered that the Plan's form and content are acceptable and environmentally responsible. Accordingly, the Plan should be referenced in any subsequent construction environmental management plan and operational environmental management plan for implementation.</p>
(n) the conservation and preservation of items of heritage, archaeological or historic significance,	See Aims of the Policy
(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 to this assessment.
<p>(p) only in cases in which a development application in relation to proposed development is determined:</p> <ul style="list-style-type: none"> 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. <p>Note: Clause 92 of the Environmental Planning and Assessment Regulation 2000 requires the Government Coastal Policy (as</p>	<p>The proposed development involves the construction of a marina which has both land and water based components.</p> <p>The potential cumulative impact on the environment has been assessed through the EIS evaluation process and mitigation measures recommended to address identified potential impact which are supported.</p>

defined in that Clause) to be taken into consideration by a consent authority when determining development applications in the local government areas identified in that Clause or on land to which the Government Coastal Policy applies.

7.5 Bega Valley Local Environmental Plan 2013 (BVLEP 2013)

Clause 2.3 – Landuse Tables and Dictionary



Zoning Map Extract - Source: Bega Valley Local Environmental Plan 2013

The land component of the marina development is zoned Part SP3 – Tourist and Part E2 – Environmental Conservation with the water component unzoned land.

Council's foreshore public reserve (Lot 4 DP 1138056) is located within the SP3 – Tourist Zoning.

That section of the site located in the E2 – Environmental Conservation Zone is effectively the beach foreshore area to Cattle Bay.

The development of the site for the purpose of a marina would be permissible with consent within the SP 3 - Tourist Zone.

Under the provisions of the BVLEP 2013 a “**marina**” is defined as:

“a permanent boat storage facility (whether located wholly on the land, wholly on a waterway or partly on land and partly on a waterway), and includes any of the following associated facilities:

- a) any facility for constructing, repairing, maintenance, storage, sale or hire of boats,*
- b) any facility for providing fuelling, sewage pump-out or other services for boats,*
- c) any facility for launching or landing boats, such as slipways or hoists,*
- d) any carparking or commercial, tourist or recreational or club facility that is ancillary to the boat storage facility,*
- e) any, berthing or mooring facility.”*

The existing wharf (which is to be integrated into the design of the proposed marina development) spans that section of the foreshore which is zoned E2 – Environmental Conservation.

Under the provisions of the BVLEP 2013 a **“jetty”** would be a permissible use within the E2 – Environmental Conservation Zone, with consent.

A **“jetty”** is defined as:

“a horizontal decked walkway providing access from the shore to the waterway and is generally constructed on a piered or piled foundation.”

It is considered that the land based component of the marina development would be a permissible use within both the SP 3 – Tourist Zone and E2 – Environmental Conservation Zone.

Clause 2.4 - Unzoned land

The water based component of the marina development is Unzoned.

Under the provisions of the Clause, the development of land may only be carried on unzoned land with consent.

Before granting development consent, the consent authority must:

- (a) consider whether the development will impact on adjoining zoned land and, if so, consider the objectives for development in the zones of the adjoining land, and
- (b) must be satisfied that the development is appropriate and is compatible with permissible land uses in any such adjoining land.

The objective of the SP3 Tourist Zone is:

“To provide for a variety of tourist-orientated development and related uses.”

The objectives of the E2 – Environmental Conservation Zone are:

“To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.”

“To prevent development that could destroy, damage or otherwise have an adverse effect on those values”

It is considered that the proposed marina development is consistent with the objectives of the Zones on the basis that:

- The proposed marina development has been designed for integration into a mixed tourist and residential development. The concept of which has been endorsed by a Major Project Concept Approved (05_0032).
- The EIS and assessment process has identified and addressed the potential impacts of the proposed marina development on environmental integrity.
- The proposed marina development would be in keeping with the natural environment and scenic qualities of Twofold Bay and its associated maritime heritage.
- The proposed marina development would be complementary to the built form of foreshore development in the immediate area, more specifically the Port of Eden and Snug Cove.
- Cultural heritage would be respected.

In addition to the above, the following provisions of the BVLEP 2013 apply and are identified below with staff comment:

- Clause 1.2 Aims of Plan
- Clause 4.3 Height of building
- Clause 5.5 Development within the coastal zone
- Clause 5.7 Development below mean high watermark
- Clause 5.10 Heritage Conservation
- Clause 6.3 Flood planning
- Clause 6.4 Coastal risk planning
- Clause 6.6 Riparian Lands and watercourse

Standard	Comment
<i>Clause 1.2 - Aims of Plan</i> (a) to protect and improve the economic, natural and social resources of Bega Valley through the principles of ecologically sustainable	The proposed development would contribute to the Eden's economic base by expanding tourism and employment opportunities. It would contribute to lifestyle choice by providing additional recreational benefits to the

<p>development, including conservation of biodiversity, energy efficiency and taking into account projected changes as a result of climate change,</p> <p>(b) to provide employment opportunities and strengthen the local economic base by encouraging a range of enterprises, including tourism, that respond to lifestyle choices, emerging markets and changes in technology,</p> <p>(c) to conserve and enhance environmental assets, including estuaries, rivers, wetlands, remnant native vegetation, soils and wildlife corridors,</p> <p>(d) to encourage compact and efficient urban settlement,</p> <p>(e) to ensure that development contributes to the natural landscape and built form environments that make up the character of Bega Valley,</p> <p>(f) to provide opportunities for a range of housing choice in locations that have good access to public transport, community facilities and services, retail and commercial services and employment opportunities,</p> <p>(g) to protect agricultural lands by preventing land fragmentation and adverse impacts from non-agricultural land uses,</p> <p>(h) to identify and conserve the Aboriginal and European cultural heritage of Bega Valley,</p> <p>(i) to restrict development on land that is subject to natural hazards,</p> <p>(j) to ensure that development has minimal impact on water quality and environmental flows of receiving waters.</p>	<p>local community and Shire generally.</p> <p>Its visual prominence would be in keeping with the natural environment and scenic qualities of Twofold Bay and its associated maritime heritage.</p> <p>The proposed development has been designed for integration into a mixed tourist and residential development. The concept of which has been endorsed by a Major Project Concept Approval (05_0032).</p> <p>The impact on cultural heritage (Aboriginal and European) has been acknowledged and respected.</p> <p>The proposed development would not be adversely affected by natural coastal hazards nor is it likely to impact on coastal processes.</p> <p>The proposed development would have manageable impacts on water quality.</p> <p>Generally, the development supports the Principles of Ecologically Sustainable Development (ESD) albeit limited given its characteristics and scope.</p> <p>Given the above, it is considered that the proposed marina development would be consistent with the objectives of the Plan</p>
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<p>Clause 4.3 Height of buildings</p> <p>(1) The objectives of the Clause are:</p> <p>(a) to retain the existing character and landscape of the locality and encourage a low-set building form,</p> <p>(b) to protect residential amenity, views, privacy and solar access.</p> <p>(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.</p>	<p>The maximum height of building nominated on the Height of Building Map is 10 metres.</p> <p>The proposed temporary management and facilities building would have a height of approximately 3 metres and would be located within the disturbed area of the old cannery site.</p> <p>The proposed building would not impact on the existing amenity of adjoining residential areas.</p> <p>Given the above, the proposed marina development would be consistent with these objectives.</p>
<p>Clause 5.5 - Development within the coastal zone</p> <p>(1) The objectives of this clause are as follows:</p> <p>(a) to provide for the protection of the coastal environment of the State for the benefit of both present and future generations through promoting the principles of ecologically sustainable development,</p> <p>(b) to implement the principles in the NSW Coastal Policy, and in particular to:</p> <p>(i) protect, enhance, maintain and restore the coastal environment, its associated ecosystems, ecological processes and biological diversity and its water quality, and</p> <p>(ii) protect and preserve the natural, cultural, recreational and economic attributes of the NSW coast, and</p> <p>(iii) provide opportunities for pedestrian public access to and along the coastal foreshore, and</p>	<p>The proposed marina development would be located within the coastal zone.</p> <p>The proposal is consistent with the key strategic objectives and actions of the NSW Coastal Policy.</p> <p>Public access to the Cattle Bay foreshore would be improved and secured.</p> <p>Access across all components of the proposed marina development would comply with the provisions of the Building Code of Australia as it relates to access for persons with disabilities.</p> <p>Biodiversity impacts have been quantified and appropriately addressed.</p> <p>The proposed marina development, given its maritime presence, would not be out of character with the marine environment and/or foreshore development in the locality.</p> <p>The impact on cultural heritage (Aboriginal and European) has been acknowledged and respected.</p> <p>The land and water based components of the proposed marina development would be sited and designed to reduce their potential impact on the scenic quality of the foreshore, waterways and adjoining and adjacent residential lands.</p> <p>Both the land and water based components of the proposed marina have been sited and designed in context with the environmental integrity of Twofold Bay its foreshore and</p>

<ul style="list-style-type: none"> (iv) recognise and accommodate coastal processes and climate change, and (v) protect amenity and scenic quality, and (vi) protect and preserve rock platforms, beach environments and beach amenity, and (vii) protect and preserve native coastal vegetation, and (viii) protect and preserve the marine environment, (ix) ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and (x) ensure that decisions in relation to new development consider the broader and cumulative impacts on the catchment, and (xi) protect Aboriginal cultural places, values and customs, and (xii) protect and preserve items of heritage, archaeological or historical significance. <p>(2) Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered:</p> <p>(a) existing public access to and along the coastal foreshore for pedestrians (including persons with a disability) with a view to:</p> <ul style="list-style-type: none"> (i) maintaining existing public access and, where possible, improving that access, and (ii) identifying opportunities for 	<p>maritime heritage.</p> <p>The proposed development would contribute to the Eden's economic base by expanding tourism and employment opportunities.</p> <p>The coastal foreshore amenity would not be adversely impacted on by way of loss of view from public and/or private lands or overshadowing.</p> <p>The proposed development would not be adversely affected by natural coastal hazards nor is it likely to impact adversely on coastal processes.</p> <p>Stormwater from the site is to be collected and channelled through existing stormwater infrastructure and a new gross pollutant trap for discharge to the Cattle Bay.</p> <p>The potential cumulative impact on the environment has been assessed through the EIS evaluation process and as relevant, mitigation measures have been recommended and/or provided to address potential impact.</p>
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<p>new public access, and</p> <p>(b) the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:</p> <ul style="list-style-type: none"> (i) the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and (ii) the location, and (iii) the bulk, scale, size and overall built form design of any building or work involved, and <p>(c) the impact of the proposed development on the amenity of the coastal foreshore including:</p> <ul style="list-style-type: none"> (i) any significant overshadowing of the coastal foreshore, and (ii) any loss of views from a public place to the coastal foreshore, and <p>(d) how the visual amenity and scenic qualities of the coast, including coastal headlands, can be protected, and</p> <p>(e) how biodiversity and ecosystems, including:</p> <ul style="list-style-type: none"> (i) native coastal vegetation and existing wildlife corridors, and (ii) rock platforms, and (iii) water quality of coastal waterbodies, and (iv) native fauna and native flora, and their habitats, can be conserved, and 	
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<p>(f) the cumulative impacts of the proposed development and other development on the coastal catchment.</p> <p>(3) Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:</p> <p>(a) the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and</p> <p>(b) if effluent from the development is disposed of by a non-reticulated system, it will not have a negative effect on the water quality of the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and</p> <p>(c) the proposed development will not discharge untreated stormwater into the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and</p> <p>(d) the proposed development will not:</p> <ul style="list-style-type: none"> (i) be significantly affected by coastal hazards, or (ii) have a significant impact on coastal hazards, or (iii) increase the risk of coastal hazards in relation to any other land. 	
<p>Clause 5.7 Development below mean high water mark</p> <p>(1) The objectives of this Clause is to ensure appropriate environmental assessment for development carried</p>	<p>Development application lodged seeking consent.</p>

<p>out on land covered by tidal waters.</p> <p>(2) Development consent is required to carry out development on any land below the mean high water mark of any body of water subject to tidal influence (including the bed of any such waters).</p>	
<p>Clause 5.10 Heritage Conservation</p> <p>The relevant provisions of the Clause are:</p> <p>(1) Objectives</p> <p>The objectives of this clause are as follows:</p> <ul style="list-style-type: none"> (a) to conserve the environmental heritage of Bega Valley, (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views, (c) to conserve archaeological sites, (d) to conserve Aboriginal objects and Aboriginal places of heritage significance. <p>(2) Requirement for consent</p> <p>Development consent is required for any of the following:</p> <ul style="list-style-type: none"> (a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance): <ul style="list-style-type: none"> (i) a heritage item, (ii) an Aboriginal object, (iii) a building, work, relic or tree within a heritage conservation area, 	<p>The land does not contain European heritage items and is not within the heritage conservation area.</p> <p>Section 10.6 of this report addresses Aboriginal places of heritage significance.</p> <p>Given the above, the proposed marina development would not be inconsistent with this Clause.</p>

<p>(b) altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item,</p> <p>(c) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,</p> <p>(d) disturbing or excavating an Aboriginal place of heritage significance,</p> <p>(e) erecting a building on land:</p> <ul style="list-style-type: none"> (i) on which a heritage item is located or that is within a heritage conservation area, or (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance, <p>(3) Effect of proposed development on heritage significance</p> <p>The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).</p> <p>(4) Heritage assessment</p> <p>The consent authority may, before granting consent to any development:</p> <p>(a) on land on which a heritage item is</p>	
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<p>located, or</p> <p>(b) on land that is within a heritage conservation area, or</p> <p>(c) on land that is within the vicinity of land referred to in paragraph (a) or (b),</p> <p>require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.</p> <p>(5) Heritage conservation management plans</p> <p>The consent authority may require, after considering the heritage significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.</p> <p>(6) Archaeological sites</p> <p>The consent authority must, before granting consent under this clause to the carrying out of development on an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the <u>Heritage Act 1977</u> applies):</p> <p>(a) notify the Heritage Council of its intention to grant consent, and</p> <p>(b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.</p> <p>(7) Aboriginal places of heritage significance</p> <p>The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance:</p>	
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<ul style="list-style-type: none"> (a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and (b) notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent. 	
<p>Clause 6.3 – Flood planning</p> <p>6.3 Flood planning</p> <p>(1) The objectives of this clause are as follows:</p> <ul style="list-style-type: none"> (a) to minimise the flood risk to life and property associated with the use of land, (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change, (c) to avoid significant adverse impacts on flood behaviour and the environment. <p>(2) This clause applies to land at or below the flood planning level.</p> <p>(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:</p> <ul style="list-style-type: none"> (a) is compatible with the flood hazard of the land, and (b) is not likely to significantly adversely affect flood behaviour resulting in 	<p>Whilst the site is periodically affected by localised flooding during major storm events, it is not mapped as flood liable under the provisions of the BVLEP 2013.</p> <p>The EIS recommends the preparation, adoption and implementation of a 'flood emergency response plan'.</p> <p>The preparation of a flood emergency response plan is considered justified and reasonable given the circumstances of the case.</p> <p>See Section 4 of Appendix 10 to this report</p>

<p>detrimental increases in the potential flood affectation of other development or properties, and</p> <p>(c) incorporates appropriate measures to manage risk to life from flood, and</p> <p>(d) is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and</p> <p>(e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.</p> <p>(4) A word or expression used in this clause has the same meaning as it has in the <i>Floodplain Development Manual</i> (ISBN 0 7347 5476 0) published by the NSW Government in April 2005, unless it is otherwise defined in this clause.</p> <p>(5) In this clause, <i>flood planning level</i> means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.</p>	
<p>Clause 6.4 – Coastal risk planning</p> <p>(1) The objectives of this clause are as follows:</p> <p>(a) to avoid significant adverse impacts from coastal hazards,</p> <p>(b) to ensure uses of land identified as coastal risk are compatible with the risks presented by coastal hazards,</p> <p>(c) to enable the evacuation of land identified as coastal risk in an emergency,</p> <p>(d) to avoid development that increases the severity of coastal hazards.</p> <p>(2) This clause applies to:</p>	<p>See Section 4 of Appendix 10 and 10.4 and 10.5 of this Report</p>

<p>(a) land in the coastal zone below the 3 metre AHD contour, or</p> <p>(b) land at or below the level of a 1:100 ARI (average recurrent interval) coastal inundation or erosion event.</p> <p>(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:</p> <p>(a) is not likely to cause detrimental increases in coastal risks to other development or properties, and</p> <p>(b) is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment, and</p> <p>(c) incorporates appropriate measures to manage risk to life from coastal risks, and</p> <p>(d) is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards, particularly if the development is located seaward of the immediate hazard line, and</p> <p>(e) provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards.</p> <p>(4) A word or expression used in this clause has the same meaning as it has in the <i>NSW Coastal Planning Guideline: Adapting to Sea Level Rise</i> (ISBN 978-1-74263-035-9) published by the NSW Government in August 2010, unless it is otherwise defined in this clause.</p> <p>(5) In this clause, coastal hazard has the same meaning as in the <u>Coastal Protection Act 1979</u>.</p>	
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Clause 6.6 – Riparian land and watercourses

(1) The objective of this clause is to protect and maintain the following:

- (a) water quality within watercourses,
- (b) the stability of the bed and banks of watercourses,
- (c) aquatic and riparian habitats,
- (d) ecological processes within watercourses and riparian areas.

(2) This clause applies to the following land:

- (a) land identified as “Watercourse” on the Riparian Lands and Watercourses Map,
- (b) all land that is within 40 metres of the top of the bank of each watercourse on land identified as “Watercourse” on that map.
- (3) Before determining a development application for development on land to which this clause applies, the consent authority must consider:
 - (a) whether or not the development is likely to have any adverse impact on the following:
 - (i) the water quality and flows within the watercourse,
 - (ii) aquatic and riparian species, habitats and ecosystems of the watercourse,
 - (iii) the stability of the bed and banks of the watercourse,
 - (iv) the free passage of fish and other aquatic organisms within or along the watercourse,
 - (v) any future rehabilitation of the watercourse and riparian

The subject land is traversed by 2 defined gully systems which discharge to Twofold Bay.

The subject land forms part of a much larger stormwater catchment which generally extends to the north.

The gullies and watercourses are mapped by BVLEP 2013 and as such, the provisions of the Clause have relevance.

As previously indicated, the area of the land, subject to this application, has been extensively disturbed by past cannery buildings, infrastructure and activities.

The water courses have been piped and are located under the existing concrete slab area. The pipe at the present time discharges through a primitive gross pollutant trap adjacent the existing seawall before discharging directly to the Twofold Bay.

The land based component of the marina development comprises the erection of a temporary building, service infrastructure and the renovation of the concrete slabs to facilitate the on-site provision of carparking.

Refurbishment and temporary use of existing stormwater drainage system incorporating the provision of a new gross pollutant trap is also proposed for the purpose of accommodating the development.

<p>areas, and</p> <p>(b) whether or not the development is likely to increase water extraction from the watercourse, and</p> <p>(c) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</p> <p>(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:</p> <p>(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or</p> <p>(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or</p> <p>(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.</p>	
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8.0 BEGA VALLEY DEVELOPMENT CONTROL PLAN 2013

The Development Application has been assessed in accordance with relevant provisions of the Plan including:

- Social and Economic Impacts
- Sustainable Design Principles
- Ecology
- Stormwater Management
- Hazards

This application is generally consistent with the Plan, however draft conditions are recommended in the draft consent to enforce the provisions. A full assessment of the DCP 2013 is included as Appendix 10 to this report.

9.0 BEGA VALLEY SECTION 94 AND 94A CONTRIBUTIONS PLAN 2014

The Plan was adopted by Council on 4 February 2015 and came into effect on 17 February 2015.

Whilst the current development application was lodged on 29 October 2014, the Plan applies to applications which have been submitted, but not determined on or before the date on which the Plan took effect.

Under the plan, a Section 94A contribution levied at the rate of 1% of the estimated cost of the development is payable.

The estimated project value (including land) as shown on the application is \$5.5 million. Based on the above criteria, a contribution of \$55,000 would be applicable.

The proponent has formally requested any subsequent contribution be waived on the basis that:

- The proponent has provided a massive material public benefit in the form of dedicating over 6500m² of prime waterfront land to Council as public reserve which has a value far in excess of the contribution payable.
- The proposal, if approved, would secure lawful public access to the existing wharf component of the marina which has a material public benefit which could be credited against the contribution payable.
- The marina does not generate any significant demand for infrastructure and facilities nominated in the Plan.

Under the Plan, Council may reduce the amount of the development contribution payable based on the circumstances of the case. However, the proponent must make a formal request justifying the variation/waiver.

The proponent has not submitted a valuation in support of the waiver.

Comment

The dedication of the foreshore public reserve (Lot 4 DP 1138056) was required as part of the Major Project Concept Approval (05_0032) for a mixed tourist and residential development.

The marina proposal is a separate development application and subject to Council's adopted Section 94 and 94A Contribution Plan.

The following condition is recommended:

- **Payment to Council of the following contributions pursuant to *Section 94 or 94A of the Environmental Planning and Assessment Act and Bega Valley Section 94 and 94A Contributions Plan 2014* prior to the release of the Construction Certificate.**

Contribution type	\$ Total	Allocation No.
Section 94A contribution	\$55,000.00	11320.1600.1612

Indexation: Where the monetary contribution is not paid before the first anniversary of the date of this development consent, the contribution amount must be indexed between the date of the consent and the date of payment, in accordance with annual movements in the Consumer Price

Index (All Groups Index) for Sydney published by the Australian Statistician.

Time for payment: Deferred payments of contributions may be accepted in certain circumstances and will need to be secured by bank guarantee. Refer to the contributions plan for Council's policy on deferred payments.

10.0 ASSESSMENT OF KEY ISSUES

Council staff and State Agencies have assessed and reviewed the EIS and accompanying information having regard to relevant Legislation, Agency requirements, Council Policy and current Best Practice Principles.

The key issues are highlighted below followed by staff comments.

10.1 Justification

The issue of justifying the need for the development of a marina has been addressed as part of the EIS process.

The EIS is supported by a detailed report prepared by Coriolis Marine entitled “Eden Marina Project Report” dated June 2012.

The Report focuses on a number of key elements being:

- Boating supply and demand analysis in relation to the proposed Eden marina;
- Suggested berth mix and staging options;
- Suggested pricing point for sale and renting marina berths;
- An anticipated budget for the marina;
- Design considerations in reference to land/water interface;
- Possible management model and fee structure for mobilisation and ongoing management of the facility; and
- Indicative price for construction of the marina and operating budget.

The Report concludes that:

- Like most marina projects, the capital investment required in the construction of a marina basin is significant and as a standalone facility, associated cost can make a business case unviable unless Government support is secured to assist in the capital costs of long term core infrastructure such as wave protection or creation of the marina basin;
- The proposed marina development would be of significant public benefit contributing to public access, infrastructure and recreational opportunities;
- Likely markets for the proposed marina are located within a 100km catchment to Eden and from Canberra making it a significant regional development providing employment and investment opportunities in the greater community.

Comment

The EIS acknowledges the report by Coriolis Marine and that the proposed marina development would deliver a modern boating facility which would have manageable environmental impact whilst contributing to the social and economic fabric of the local Eden community, the Shire and Region generally.

The EIS concludes that there are sufficient grounds to justify the proposed marina development, which is supported by Council staff.

10.2 Access

Access linking the land and water based components of the marina would be provided over Council's foreshore public reserve.

This arrangement is to be secured over the short term by the issue of a licence by Council under the provisions of the Local Government Act 1993 and ultimately through the reclassification of the access corridor from 'community land' to 'operational land'. Once re-classified as operational land, an easement for access would to be created and registered over the constructed corridor. At that time the licence would terminate.

At the present time, the proponent is negotiating with Council over the content of the licence. It is expected that the licence would enable the short term access and use by the proponent for the provision of public utilities and associated works.

Concurrently, Council is in the process of reclassifying that part of Lot 4 DP 1138056 required to facilitate access from 'community land' to 'operational land'. Council is supportive of the reclassification.

The Department of Planning and Environment's projected time line to effect the reclassification is scheduled for August 2016.

Based on this timeline a decision on the reclassification of the land would not be made prior to the determination of the current development application for the marina.

On that basis, it is considered that any approval for the marina development be as a 'Deferred Commencement'.

Part A of any subsequent consent could read:

Deferred Commencement - Part A

This is a 'Deferred Commencement Consent' under section 80(3) of the Environmental Planning and Assessment Act 1979 (as amended). This Consent does not become operative until the proponent has satisfied the following requirements:

- (a) The proponent shall, at his or her expense, and in consultation with Council, secure an easement of access 6 metres wide over Council's foreshore public reserve (Lot 4 DP1138056). A copy of the registered plan of easement shall be submitted to Council upon registration at the Office of Land and Property Information.**

All issues shall be satisfactorily resolved within a period of 12 months from the 'Determination Date', as shown on this Consent.

Upon compliance with the issues specified, and written confirmation from Council to that effect, the Consent shall become operative from a 'Consent to Operate Date' (to be included on the written confirmation) subject to the conditions listed in Part B to this Consent and any additional conditions arising from the requirement of Part A.

The proponent's intentions to formalise public access to the existing wharf is commendable and is supported by Council and Department of Primary Industries – Fisheries NSW. On that basis, a suitable condition should be imposed on any subsequent consent securing the same. However, it is to be acknowledged that the proponent will need to engage the Department of Trade and Investment Crown Lands for the purpose of negotiating a lease over the structure.

The following conditions are recommended:

- Prior to the issue of any subsequent construction certificate, the proponent shall negotiate with and enter into a lease arrangement with the Department of Trade and Investment – Crown Lands which, among other things, shall secure lawful public access over the existing wharf component of the proposed marina development. A copy of the endorsed lease shall be submitted to Council within 3 months of its endorsement date to give effect to this condition.**
- Unrestricted public access to the existing wharf component of the marina shall be maintained at all times to Council's satisfaction unless closure is in the interest of public safety and/or security.**

Public access to the floating component of the marina shall be maintained between the hours of 7am to 6pm (Summer daylight saving) and 7am to 5pm (non daylight saving) to Council's satisfaction unless closure is in the interest of public safety and/or security.

Reason: These conditions are required to ensure public access to the marina development.

10.3 Biodiversity Assessment

The very nature of the proposed marina development has the potential to adversely impact on the ecology of the Twofold Bay through the construction stage and its operation over the long term.

In recognition, the EIS process has acknowledged the potential resulting in the preparation and submission of a number of specialist reports namely:

- Cattle Bay Marina Project EIS - Aquatic Ecology Assessment prepared by Marine Pollution Research Pty Ltd dated May 2013.
- Cattle Bay Marina – Hydrographic Mapping and Marine Mammal Risk profiles prepared by Ocean Environmental Consulting dated July 2014.
- Cattle Bay Marina - Response to Agency Submissions Relating to Aquatic Ecology prepared by Ocean Environmental Consulting dated 30 March 2015.
- Cattle Bay Marina – Responses to Agency Submissions Relating to Aquatic Ecology #2 June 2015

Comment

Collectively, the reports acknowledge that the oceanic nature of Twofold Bay provides habitat opportunities for some 63 listed species (including 26 threatened species) identified under the Commonwealth Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act), NSW Threatened Species Conservation Act 1995 (TSC Act) and NSW Fisheries Management Act 1994 (FM Act).

In particular, Twofold Bay and the immediate coastal waters offshore provide migratory corridors, staging and feeding resources for whales (Humpback and Southern Right whales), dolphins (Common and Bottlenose dolphins) and seals (Australian fur seal and New Zealand fur seal).

The Bay may also support a resident population of indo-pacific bottlenose dolphins.

Twofold Bay, given its maritime heritage also hosts numerous introduced species including several priority-listed species such as the Mediterranean fan worm.

The reports have established the presence of 3 species of seagrass (Posidonia, Heterozostera and Zostera) within the aquatic habitat of Cattle Bay and that seabed sediments are not contaminated to the detriment of aquatic life.

The reports also establish that Cattle Bay does not support permanent populations or individual fish or shark species or threatened marine mammals, reptiles, shore and wading birds listed under the aforementioned Acts.

However, the reports indicate that individuals of listed threatened species could be expected to utilise the habitat opportunities offered by Cattle Bay and more broadly Twofold Bay from time to time.

The reports also establish that protected species such as seahorses, sea-dragons and pipe fish are expected to reside in the habitat opportunities offered by Cattle Bay and that species such as dolphins, little penguins and a variety of sea birds utilise Cattle Bay and foreshore for feeding and roosting.

Terrestrial habitat may also be utilised by marine/migratory bird species. In this regard, the reports acknowledge that the land based component of the site is highly disturbed with some regrowth and exotic vegetation and that the surrounding headlands are well represented vegetation communities in the region.

Accordingly, it is not expected that the land based component of the marina development would provide any significant breeding, shelter or feeding opportunities for protected or migratory bird species.

The reports identify potential construction and operational impacts and make specific recommendations to mitigate those impacts. Those being:

Construction Impact

In summary, direct impacts of construction include:

- seabed disturbance associated with remediation works to the existing wharf;
- placement of piles associated with the construction of the wave attenuator, floating component of the new marina and fixing floating plant during construction and remediation works;
- the anchoring of floating plant during construction and remediation works; and
- works associated with the relocation of existing swing moorings

In summary, indirect impacts of construction include:

- construction noise;
- cable strike, propeller wash; and
- liquid and solid material spills.

Operational Impacts

Operational impacts are associated with the physical marine structure with marina and vessel operation in and outside the marina footprint.

In summary, potential operational impacts include:

- shading from structures and vessels;
- impacts associated with water circulation and wave attenuation;
- decrease in water quality;
- increased settlement of introduced marine species;
- impacts from marina noise and lighting; and
- consequences of marina breakup – fire, vessel collision and structural failure.

In response, the EIS concludes that the aquatic ecology of Twofold Bay and Cattle Bay can be effectively protected during the construction and operation of the marina by the preparation and implementation of construction and operational environmental management plans.

The EIS makes the following recommendations for inclusion in the construction and operational environmental management plans:

- the preparation and implementation of a construction vessel mooring, anchoring and vessel wake minimisation plan;
- the preparation and implementation of a introduced marine species protocol for the relocation and removal of swing moorings;
- the preparation and implementation of a construction marine mammal protection plan;
- the preparation and implementation of a construction marine debris clearance plan to remove and dispose of the accumulated hard substratum rubbish under the existing wharf;
- the preparation and implementation of an operational water, beach and seabed rubbish collection and disposal plan;
- the preparation and implementation of an operational marine mammal protection plan incorporating protocols for assessing likely daily marine mammal encounters via a network of marina, tourist and agency stakeholders;
- the preparation of an Environmental Harm Minimisation Publication for distribution to marina patrons during induction and to any vessel accessing the marina; and
- the development and implementation of appropriate Environmental Harm Minimisation signage for the marina.

Draft Construction and Operational Management Plans have been submitted as part of the current application which, among other matters, address the above recommendations.

The Plans have been prepared by Royal Haskoning DHV and are titled:

- Cattle Bay Marina Operational Environmental Management Plan dated March 2013 (see Appendix 6).
- Cattle Bay Marina Construction Environmental Management Plan dated April 2015 (see Appendix 7).

Comment

The Draft Management Plans have been evaluated by relevant Council Staff and State Agencies and a number of amendments have been considered warranted to ensure appropriate actions and measures are established and implemented to mitigate identified potential impacts.

Accordingly it is considered that conditions should be imposed on any subsequent consent to initiate the required amendments.

The following conditions are recommended:

- **Prior to the issue of any subsequent construction certificate by the Principal Certifying Authority, a Construction Environmental Management Plan shall be prepared in consultation with all relevant authorities and submitted to Council for endorsement. The form and content of the Plan shall be compliant with the Plan prepared by Royal Haskoning DHV - Cattle Bay Marina Construction Environmental Management Plan dated April 2015 and shall include (but not all inclusive) the following amendments:**
 - (a) Section 1.3 of the CEMP being amended to address the scope of works associated with:**
 - the final alignment of the wave attenuator inclusive of documentation being submitted by Royal Haskoning and/or Cardno which certifies that the final design and location of the attenuator is consistent with the modelled design in the report prepared by Cardno 'Cattle Bay Marina, Eden – Wave Modelling' dated 28 July 2014 and subsequent correspondence by Royal Haskoning DHV entitled "Cattle Bay Marina – Response to Submissions on EIS Supplementary Statement on Wave Attenuator and Potential Impacts" dated 8 April 15; and
 - the renovation and landscaping of the carpark area and site generally as required by this consent.

- (b) Section 1.4 of the CEMP being amended to reference and to ensure compliance with the South Australian Government Department of Planning Transport and Infrastructure Underwater Piling Noise Guidelines 2012.
- (c) Section 4.5 of the CEMP being amended to acknowledge the presence of the *Posidonia australis* weed bed to the east of the marina site and to facilitate its location on-site as an exclusion zone during construction.
- (d) Section 4.8 of the CEMP being amended in relation to the public notification to the effect that an introductory letter (inclusive of the construction program and sketches of the project) shall be circulated to all residences within a 250 metre radius of the construction site as measured from the end of the existing wharf structure.
- (e) Section 4.12 of the CEMP being amended to preclude Council's foreshore public reserve (Lot 4 DP 1138056) and Cocora Beach and adjacent foreshore areas from being used as a staging area for works associated with the refurbishment of the existing wharf or the construction of the floating components of the marina or wave attenuator
- (f) Section 4.12 of the CEMP being amended to facilitate the erection of security fencing of the boundaries of Council's foreshore public reserve (excluding the access corridor) to Council's satisfaction for the purpose of precluding direct access from the construction site and Cattle Bay Beach during construction.
- (g) Section 4.2 of the CEMP being amended to ensure the that appropriate soil and water management controls are implemented and maintained in accordance with the Landcom publication Managing Urban Stormwater: Soils and Construction 4th Edition March 2004 (Blue Book)

On endorsement, the Construction Environmental Management Plan shall be fully implemented to the satisfaction of Council and all relevant State Agencies.

- Prior to the issue of any subsequent construction certificate by the Principal Certifying Authority, an Operational Environmental Management Plan shall be prepared in consultation with all relevant authorities and submitted to Council for endorsement. The form and content of the Plan shall be compliant with the Plan prepared by Royal Haskoning DHV - Cattle Bay Marina Operational Environmental Management Plan dated March 2013 and shall include (but not all inclusive) the following amendments.

- (a) **Appendix A of the OEMP being amended to reflect the final alignment of the wave attenuator.**
- (b) **Section 4 of the OEMP shall be amended to facilitate:**
- **the independent environmental audit process being undertaken by suitably qualified and experienced persons acceptable to Council and relevant State Agencies in all fields of operation as detailed in the OEMP.**
 - **the submission to Council for endorsement of the environmental audit inclusive of any recommendations and/or actions considered warranted to ensure the effective operation of the marina.**
 - **the implementation, to the satisfaction of Council and relevant State Agencies, of any recommendations and/or actions identified by the environmental audit process.**
 - **a review of the endorsed OEMP as part of the environmental audit process and the update of the OEMP as considered warranted.**
 - **the submission upon written notice of any and all matters relating to the operation of the marina which are tracked and managed through the OEMP. The information being submitted to the relevant authority within 14 business days from the endorsement date of the notice and includes (but not limited to) logs, licenses, monitoring and incident reports, registers, training, insurances, complaints, check lists and agreements.**
- (c) **Section 14 of the OEMP shall be amended to facilitate:**
- **The provision and use of a minimum of 2 mobile sewage pump out units.**
 - **The operation of mobile sewage pump out units being only carried out by suitably trained marina personnel.**

On endorsement, the Operational Environmental Management Plan shall be fully implemented to the satisfaction of Council and all relevant State Agencies.

Reason: These conditions are required to ensure that the form and content of the Construction and Operational Environment Management Plans fully address the potential impacts of the proposed marina development on biodiversity.

10.4 Geotechnical Considerations in Construction

An appraisal of geotechnical conditions has been made by Royal Haskoning DHV based on:

- available historical geotechnical/geophysical information;
- recent bathymetric and seabed mapping undertaken by Marine Solutions (July 2014) in support of the proposed marina; and
- investigations undertaken by NSW Trade and Investment –Crown Lands (January – March 2015) as part of the studies into the Breakwater Wharf Extension Project Eden Harbour.

Royal Haskoning DHV conclude that:

- the investigations to date indicate that the subsurface conditions in Snug Cove and Cattle Bay comprise sandy sediments overlaying clay and rock with individual layers of various thickness;
- the geotechnical conditions appear reasonably uniform and as such, would not offer any particular spatial constraints or opportunity in the siting and design of the wave attenuator;
- the location and design of the wave attenuator is broadly determined by the location and size of the proposed marina it is to protect;
- the alignment of the wave attenuator is critical and driven primarily by the need to ensure the environmental integrity of Cocora Beach. Geotechnical considerations would be subservient.
- the wave attenuator would be designed and constructed in accordance with Australian Standard AS 4997 - 2005 'Guidelines for the Design of Maritime Structures'.
- The attenuator can be readily designed for survivability against severe storm/wave events and/or sea level rise.

Comment

As previously advised, no detailed engineering construction plans have been submitted to confirm the exact location of the attenuator.

The final design of the attenuator should be consistent with the modelled design in the report prepared by Carno 'Cattle Bay Marina, Eden – Wave Modelling' dated 28 July 2014 and subsequent correspondence by Royal Haskoning DHV dated 8 April 15 and detailed engineering plans submitted for final approval.

The following conditions are recommended:

- **As part of any subsequent construction certificate application, detailed siting and engineering design plans for the wave attenuator shall be submitted to the Principal Certifying Authority for endorsement.**

The siting and design of the wave attenuator shall be consistent with Approved Development Plans and the modelled design in the report prepared by Carno ‘Cattle Bay Marina, Eden – Wave Modelling’ dated 28 July 2014 and subsequent correspondence by Royal Haskoning DHV entitled “Cattle Bay Marina – Response to Submissions on EIS Supplementary Statement on Wave Attenuator and Potential Impacts” dated 8 April 15.

The plans shall be prepared and certified by a chartered professional engineer.

- **All work required in the construction of the wave attenuator shall be undertaken and completed in accordance with the certified siting and engineering design plans. On completion, the works are to be certified by the chartered professional engineer as being compliant with the endorsed plans and documentation submitted to the Principal Certifying Authority to give effect to this condition.**

Reason: These conditions are considered warranted to ensure that the wave attenuator has been suitably designed and constructed.

10.5 Coastal Processes

The proposed marina development would be exposed to and would influence coastal processes.

For the purpose of evaluating the extent of the potential impacts, the EIS is supported by reports prepared by Cardno entitled ‘Cattle Bay Marina Eden - Wave Modelling dated July 2014 and Royal Haskoning DHV entitled “Cattle Bay Marina - Response to Submissions on EIS Supplementary Statement on Wave Attenuator and Potential Impacts dated April 2015.

The purpose of the reports being to investigate the potential effects of waves reflected from the proposed wave attenuator on Cattle Bay Beach and Cocora Beach.

The EIS, drawing from the investigations and findings in the Reports, quantified potential impacts associated with:

- Wave climate (local wind generated waves and ocean swells).
- Elevated water levels (Climate change)

- Water movement patterns.
- Sediment movement and shore line stability.
- Flooding

Comment

It is considered that the EIS process has adequately evaluated and quantified the nature and extent of coastal processes which may have an influence on or may be influenced by, the siting, design and operation of the proposed marina development.

The EIS concludes that the proposed marina development, through siting, design and operation would have only a minor impact on coastal processes and would be resilient to coastal processes. In reaching this conclusion, the following observations have been taken into account:

- The wave attenuator and floating jetty component of the marina would be sited and designed to achieve the wave climate criteria in AS 3962 – 2001, “Guidelines for Design of Marinas”.
- The wave attenuator and floating jetty would be resilient to sea level rise or can be readily adapted to accommodate sea level rise.
- The existing wharf would be well protected behind the wave attenuator and floating jetty component of the marina.
- The height of the existing wharf has been established at 2m AHD. Accordingly, it is unlikely that its height would need to be raised within the life of the floating marina.
- The potential impact of existing and proposed water based structures on water movement patterns would be minor in context with the waterway area of Twofold bay.
- Cattle Bay beach would become more sheltered to wave action and sediment movement resulting in a narrowing of its western end over time. However, the ‘sandy’ beach character would not be lost over its length to the detriment of public access.
- There would be no significant change in the foreshore alignment or characteristics of Cocora Beach.
- Temporary buildings and carpark areas are well removed from the foreshore interface.
- The temporary buildings associated with the land based component of the marina may from time to time, be exposed to minor flooding during major storm events.

Refer to Section 10.3 of this report for additional detail and recommended conditions.

In addition, further consideration was given to the influences of coastal process in a report prepared by Royal Haskoning DHV entitled “Cattle Bay Marina - Response to Submissions on EIS Supplementary Statement on Wave Attenuator and Potential Impacts dated April 2015.

The report was undertaken and submitted in response to submissions received by Council during the initial notification process.

The report generally expands on and concurs with the investigations, findings and conclusions detailed in Cardno’s initial report (as mentioned above) to the effect that the proposed marina development would have only a minor impact on coastal processes and that the development, through siting and design, would be resilient to coastal processes.

The Report is supplemented by an additional investigations report prepared by Cardno entitled “Cattle Bay Marina – Mussel Farm Impact Assessment dated March 2015.

The purpose of the Cardno’s Report being to assess the wave climate in the vicinity of the mussel farm before and after the installation of the proposed wave attenuator and to highlight any potential changes.

Note: The mussel farm is located to the south west of the Cocora Point being approximately 470 metres from the proposed marina development and more specifically, the wave attenuator.

Drawing on the investigations undertaken by Cardno, Royal Haskoning’s Report concludes that the wave attenuator would only have a minimal effect on wave heights, wave direction and wave energy at the location of the mussel farm.

The conclusion is based on the distance between the wave attenuator and mussel farm and that waves reflected off the attenuator would disperse with distance over the intervening and surrounding waterway area.

Comment

The potential impacts on mussel farm infrastructure resulting from a changing wave climate generated by the wave attenuator are of legitimate concern and accordingly, required further investigation to determine the nature and extent of any potential impact.

Based on the detailed investigations and reporting, it is considered that the potential impacts associated with the function of the wave attenuator have been appropriately addressed and that any impact on mussel farm infrastructure would be minor.

Further comments are made on this issue later in this report (see Section 10.10).

10.6 Heritage and Archaeology

No detailed investigations and reporting have been undertaken as part of the current EIS process to assess potential impacts of the proposed marina development on cultural heritage and archaeology.

Detailed investigations and reporting in support of the mixed tourist and residential development endorsed under the Major Project Concept Approval (05_0032) were undertaken by the proponent's consultant South East Archaeology in 2008.

Those investigations identified an artefact scatter on the land (subject to the Concept Approval) and a moderate to high potential for further items of cultural heritage to exist elsewhere on the land.

At the time, the preparation of an Aboriginal Heritage Management Plan specifying policies, strategies and actions to mitigate and manage potential impacts in consultation with the Eden Local Aboriginal Land Council was recommended and subsequently embodied in the Concept Approval and associated Statement of Commitments.

The current application relies heavily on these investigations and subsequent actions. No supplementary investigations and reporting have been submitted in support of the current application.

The known artefact scatter is located in a bushland corridor in the south west corner of the development site subject to the Concept Approval. It is well removed from the area of the site subject to the current application, more specifically, the area on which the temporary buildings and carpark areas would be located.

As previously documented, the land based component of the subject site is in a significantly disturbed state stemming from its past development history as a cannery.

The current marina proposal, in part, involves the erection of a temporary building and provision of on-site carparking utilising the existing concrete slab areas.

On that basis, the EIS concludes that the land based component of the marina development is unlikely to impact on any known or unknown items of significance.

Comment

In assessing the current application due diligence must be exercised. Accordingly, given the findings of past investigation and reporting and that the existing concrete slab areas are likely to be disturbed in the provision of required service infrastructure and carpark renovation, it's not unreasonable to conclude that associated site works may have potential impact on unknown items of significance.

This position is supported by the NSW Office of Environment and Heritage (OEH) in its response to Council dated 10 September 2015.

In its response, OEH raised concerns over relying on past investigations undertaken and recommendations made in relation to the endorsed Major Project Concept Approval (05_0032) for the mixed tourist and residential component of the development in August 2008.

OEH advised that if significant ground disturbing activities such as the upgrade of services and infrastructure is required as part of the proposed marina development,

then a more formal archaeological assessment should be undertaken to assess the potential for impact on Aboriginal heritage values.

Accordingly, OEH has recommended that a more appropriate assessment should be undertaken prior to approval as any Aboriginal objects uncovered during construction works would require an immediate stop work whilst the objects are assessed which could result in significant time delays in construction whilst consideration is being given to the issue of an Aboriginal Heritage Impact Permit.

OEH has also identified an inaccuracy in the draft construction environmental management plan which references the Heritage Act 1977 and has requested the reference to be amended to National Parks and Wildlife Act 1974.

The following conditions are recommended:

- **Prior to the commencement of any works associated with the renovation of the existing concrete slabs, the provision of service infrastructure and site landscaping, an Aboriginal Heritage Management Plan (AHMP) shall be prepared by a qualified archaeologist in consultation with the Office of Environment and Heritage and submitted to Council for endorsement.**
- **No Aboriginal objects may be harmed unless an Aboriginal Heritage Impact Permit has been issued by the NSW Office of Environment and Heritage.**
- **If any Aboriginal objects are unearthed during construction all work must cease immediately and the NSW Office of Environment and heritage must be contacted for advice before any works re-commence.**
- **All site workers and contractors must be provided with induction training on the identification of Aboriginal artefacts, Aboriginal cultural awareness and procedural protocols as outlined in the Aboriginal Heritage Management Plan during the construction phases of the development.**
- **Section 4.10 of the Construction Environmental Management Plan shall be amended to embody the requirements of above conditions**
- **Section 4.10 of the Construction Environmental Management Plan shall be amended by deleting reference to 'Heritage Act 1977' and its replacement by National Parks and Wildlife Act 1974.**

Reason: These conditions are required to ensure the integrity of Aboriginal culture and heritage.

Commenting on the current marina proposal, The Eden Local Aboriginal Land Council has referenced the importance of the Bundian Way Walking Route to Aboriginal culture and heritage.

See Appendix 8.

In this respect, the Cocora Beach and Cattle Bay precincts hold significant cultural values. The walking route effectively follows the shoreline of Twofold Bay and traverses the foreshore area of the subject land. Accordingly, the Land Council is of the opinion that the route between the site, Snug Cove and Cocora Beach should be constructed as part of the marina development.

The Major Project Concept Approval required the dedication of a public reserve along the foreshore to Cattle Bay. The reserve has subsequently been dedicated in subdivision and vested in Council's ownership.

The Bundian Way walking route follows the dedicated foreshore public reserve.

The proposed marina development would not preclude public access to the foreshore reserve and as such, the creation and prominence of the Bundian Way would be respected and secured in perpetuity. However, the physical construction of the route between the subject site and Snug Cove is considered beyond the scope of the proposed marina development and as such, is not considered reasonable or justified.

10.7 Visual Amenity and Impact

The EIS is supported by a visual impact assessment prepared by Inspire Urban Design and Planning entitled "Review and Assessment of Potential Visual Impacts – Proposed Marina and Wave Attenuator" dated June 2014.

In summary, the report provides a view analysis of the surrounding landscape and potential visual impacts associated with the proposed marina when viewed from the land (public and private) and adjoining waterways.

The report concludes that:

- the magnitude of the impact on the landscape or viewer depends on the nature and scale of the proposed development within its setting;
- the magnitude of the impact on viewer sensitivity would be regarded as "low".
- The assessment demonstrated that there would be a negligible and acceptable visual impact.

The report given its findings, made no recommendations regarding mitigation measures to limit any impact.

The EIS, in summary, supports the findings and conclusions in the report. In doing so, it makes the following observations:

- The site had in the past been used as a cannery involving significant boat traffic and use of the existing wharf.



Photo A - View internal to the site looking south over remanence of old cannery towards Cattle Bay – Source: Bega Valley Shire Council September 2015.

- The location of the temporary buildings and carpark areas are removed from the foreshore interface.
- the visual back drop offered by the elevated topography and vegetation will continue to visually dominate the landscape.



Photo B - View looking north from the end of the existing wharf showing the elevated nature of the topography surrounding the development site – Source: Bega Valley Shire Council September 2015.

- Cattle Bay already contains a number of swing moorings that presents a vista of moored vessels when viewed from the public domain.



Photo C - View from existing wharf looking south east over the proposed water way area to the new jetty component of the marina – Source: Bega Valley Shire Council September 2015.

- the presence of Eden Port immediately to the south east has a prominent and significant visual impact, which is generally accepted within the community.



Photo D - View to the northwest over the Eden Port facilities in Snug Cove with site in the background – Source: Inspire Urban Design and Planning, Proposed Cattle Bay Marina Visual Impact Assessment June 2014.

- Views to the water from adjoining private and public lands extend out over the site towards Twofold Bay and beyond. Views are filtered by existing vegetation, thus limiting potential view impacts.



Photo E - View from deck area to 32 Cocora Street over site – Source: Bega Valley Shire Council September 2015.

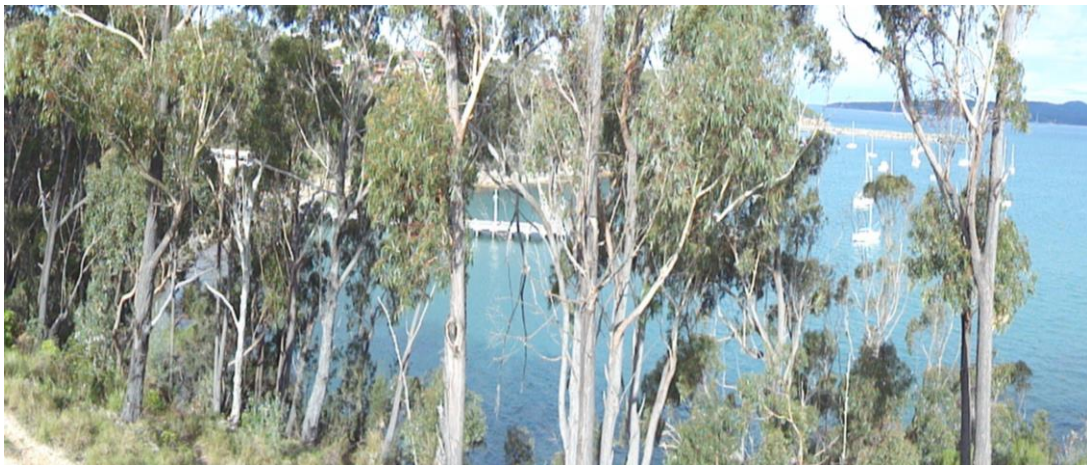


Photo F - View from deck area to 2 Bay Street over site – Source: Bega Valley Shire Council September 2015.



Photo G - Views to the west from Cattle Bay Road - Source: Inspire Urban Design and Planning ,Proposed Cattle Bay Marina Visual Impact Assessment June 2014



Photo H - View from Bay Street looking south east over Twofold Bay – Source: Inspire Urban Design and Planning – Proposed Cattle Bay Marina Visual Impact Assessment June 2014



Photo I - View towards site looking north east from Cocora Beach – Source: Bega Valley Shire Council September 2015.

- Cattle Bay, more specifically the subject site, forms only a small component of the wider view catchment to Twofold Bay. Accordingly, potential impact when viewed from a distance must be taken in context.



Photo J - Existing view from waterway looking north west – Source: Inspire Urban Design and Planning – Proposed Cattle Bay Marina Visual Impact Assessment June 2014



*Photomontage of estimate of change when viewed from waterway looking north west
– Source: Inspire Urban Design and Planning – Proposed Cattle Bay Marina Visual Impact Assessment June 2014*

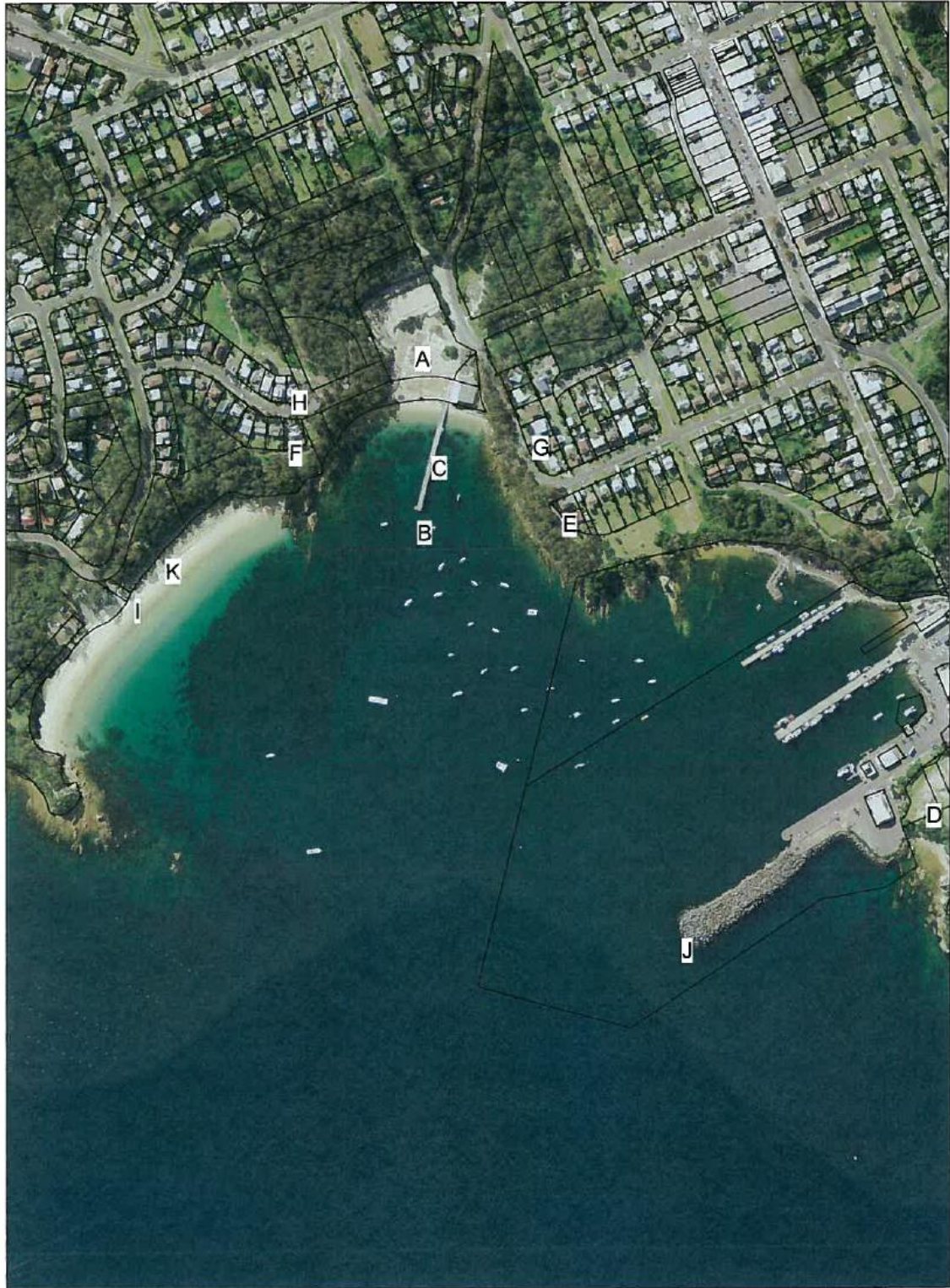


Photo K - View of existing waterway from Cocora Beach – Source: Inspire Urban Design and Planning – Proposed Cattle Bay Marina Visual Impact Assessment June 2014



Photomontage of estimate of change (bottom) when viewed from Cocora Beach – Source: Inspire Urban Design and Planning – Proposed Cattle Bay Marina Visual Impact Assessment June 2014

VIEW ANALYSIS - PHOTO LOCATIONS



 NORTH

The EIS concludes that the proposed marina would:

- extend prominently into Twofold Bay;
- result in a visual change in vessel density and maritime activity compared to the existing situation;
- have a minor and insignificant visual impact given the prominence of distance, elevated and filtered views;
- would have only a very minor impact on view composition given its scale in context with the size of the visual catchment of Twofold Bay and the immediate presence of Snug Cove.
- be consistent with the intrinsic character of the area and would be almost imperceptible to the casual observer.

On that basis, the EIS makes no recommendations regarding mitigation measures to limit any impact.

Comment

After considering the potential visual impacts of the proposed development, including comprehensive evaluation of impact from around Twofold Bay, it is considered that the Report by Inspire Urban Design and Planning has appropriately addressed the visual quality of the locality in terms of its nature, expanse and worth and the potential impact the proposed marina would have on those values.

However, whilst the findings are generally supported, the following needs to be addressed:

- the design of the temporary building, more specifically, the type of materials to be used in its construction and external finishes;
- site landscape treatments;
- site illumination – access lighting and security floodlighting.

The following conditions are recommended:

- **Detailed design and construction plans of the proposed temporary building shall be submitted to Council for endorsement prior to the issue of any subsequent construction certificate by the Principal Certifying Authority. The design of the building shall have regard to the visual quality of the locality and shall include:**
 - (a) a design solution which positively mitigates potential visual impacts;**
 - (b) external building finishes (including glazing);**
 - (c) a colour palette (including colour samples)**

The buildings shall be constructed and finished in accordance with the approved plans to the satisfaction of the Principal Certifying Authority.

- **A detailed landscape plan shall be submitted and approved by Council prior to the issue of any subsequent construction certificate by the Principal Certifying Authority. The plan shall be prepared by a qualified landscape architect. The plan shall have regard to the visual quality of the locality and shall provide for:**
 - (a) the provision of landscaping having a minimum width of 6 metres across the Cattle Bay Road frontage of the site;**
 - (b) the provision of landscaping within the carpark area including the curtilage of the temporary building;**
 - (c) the provision of landscaping having a minimum width of 3 metres across common boundary with Council's public reserve (Lot 4 DP 1138056).**

All landscape works shall be completed in accordance with the approved landscape plan prior to the issue of any subsequent occupation certificate by the Principal Certifying Authority and maintained at all times thereafter to Council's satisfaction or until such time as the mixed tourist and residential development endorsed by the Major Project Concept Approval (05_0032) comes to fruition.

- **Lighting of the marina component shall be in accordance with Australia Standard AS 3962-2001 'Guidelines for Design of Marinas'.**
- **All exterior lighting of the land based components of the marina shall be located and directed in such a manner so as not to create a nuisance to the surrounding land use. The lighting shall be the minimum level of intensity needed to ensure safe access and operation of the marina.**

The lighting shall be designed in accordance with Australian Standard 4282 "Control of obtrusive effects of outdoor lighting" (1997).

Reason: These conditions are required to reduce potential visual impact of the marina development when viewed from adjoining and adjacent lands and Twofold Bay

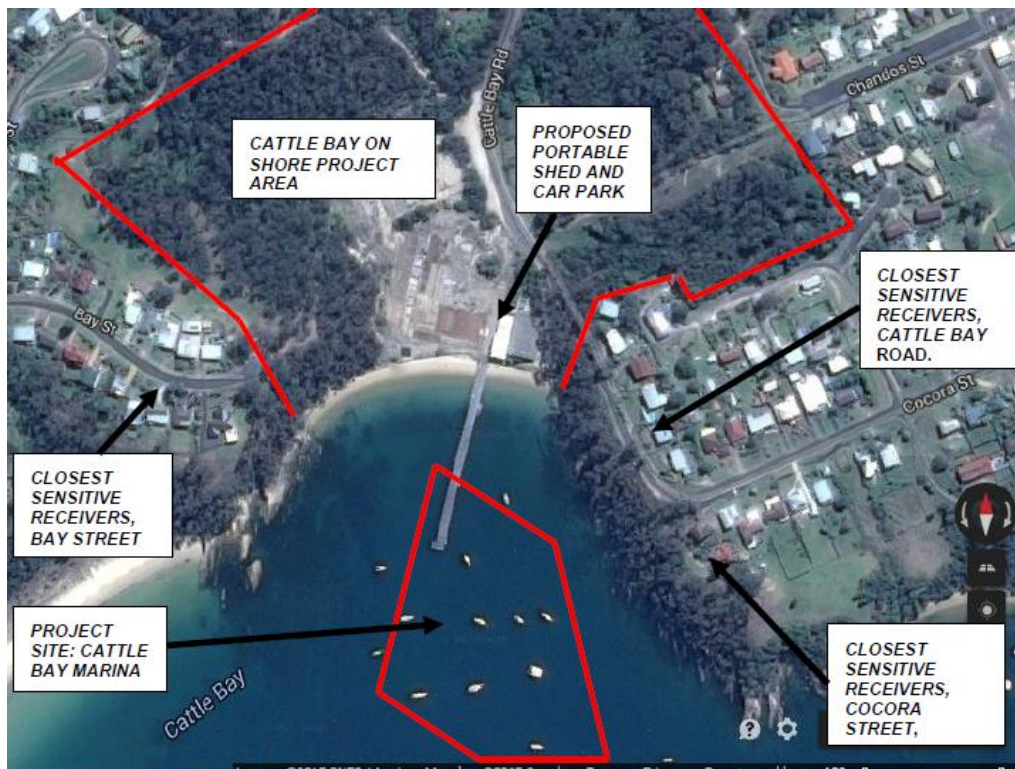
10.8 Potential Air, Noise and Vibration Impacts

• Air Quality Impacts

The EIS is supported by an air quality report prepared by West and Associates Pty Ltd entitled 'Cattle Bay Marina Development Application Air Quality Report Cattle Bay Eden' dated October 2015.

The report identifies the closest sensitive receivers as being:

- the residential properties at 38, 40 to 46 Cattle Bay Road which are separated from the marina pontoons by 100m to 150m and 90m to the proposed entry/exits channel on the north eastern side of the marina. These properties are geographically elevated above the foreshore and overlook the project site.
- the residential properties at 32 and 37 Cocora Street and 1 Victoria Terrace which are separated from the marina pontoons by 80m to 200m and 75m to the entry/exist channel on the north eastern side of the marina. These properties are geographically elevated above the foreshore and overlook the project site.
- the residential properties at 1 and 2 to 8 inclusive Bay Street which are separated from the designated super yacht/commercial berthing area to the marina 130m to 150m designated and 120m from the berthing channel. These properties are geographically elevated above the foreshore and overlook the project site.



Source: Cattle Bay Marina Development Air Quality Report: West and Associates 14 October 2015

The report identifies the current air quality is influenced by:

- exhaust from boat motors located on moorings in Cattle Bay ;
- exhaust from motor vehicles using Cattle Bay Road.
- exhaust from private motor vehicle accessing their place of residence.

In assessing potential impacts, the report references:

- The Protection of the Environment Operations Act 1997;
- WorkSafe Australia - Workplace Exposure Standards for Airborne Contaminants December 2011; and
- specific sections of AS 1668.2 2012 – The use of ventilation and air conditioning in buildings – mechanical ventilation in Buildings;

The report nominates that the principal source of airborne contaminants associated with the proposed marina development to be exhaust emissions from petrol and diesel motors and that in all cases, their use would be in the open.

The report also concludes that any air borne contaminants and/or offensive odours (sewage pump-out cart operation) associated with the marina development would dilute over distance and as such would have no impact on nearby sensitive receivers.

Comment

The report by West and Associates has been reviewed by relevant Council staff and the Environment Protection Authority and found to be acceptable in terms of its form and content and assessment of potential impacts.

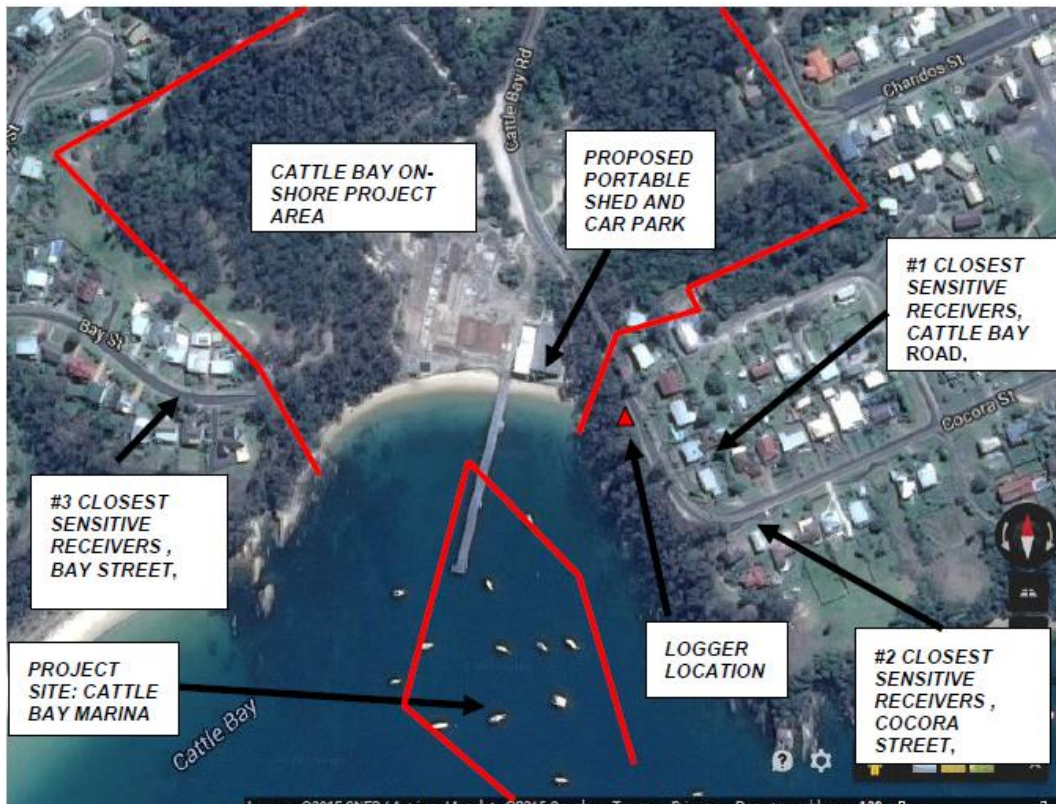
• Acoustic Impacts

The EIS is supported by an acoustic report prepared by West and Associates Pty Ltd entitled 'Cattle Bay Marina Development Application Acoustic Report at Cattle Bay Road Eden' October 2014.

The report identifies the closest sensitive receivers as being:

- the residential properties at 38, 40 to 46 Cattle bay Road which are separated from the marina pontoons by 100m to 150m and 90m to the proposed entry/exits channel on the north eastern side of the marina. These properties are geographically elevated above the foreshore and overlook the project site.
- the residential properties at 32 and 37 Cocora Street and 1 Victoria Terrace Cocora Street which are separated from the marina pontoons by 80m to 200m and 75m to the entry/exist channel on the north eastern side of the marina . These properties are geographically elevated above the foreshore and overlook the project site.

- the residential properties at 1 and 2 to 8 inclusive Bay Street which are separated from the designated super yacht/commercial berthing area to the marina 130m to 150m designated and 120m from the berthing channel. These properties are geographically elevated above the foreshore and overlook the project site.



Source: Cattle Bay Marina Development West and Associates 14 October 2015

The Rrport identifies the current noise sources affecting residential receivers in the immediate area to be:

- boat traffic in and around Cattle Bay (swing moorings);
- road traffic using Cattle Bay Road.

In assessing potential impacts, the report references:

- the NSW EPA Noise Guide for Local government 2010;
- NSW EPA Industrial Noise Policy 2000;
- NSW EPA Interim Construction Noise Guidelines 2009.

The report also draws reference from relevant sections and descriptions in the legal proceedings, site testing measurements and conclusions contained in the deliberations contested in Land and Environment Court relating to *Rose Bay Marina Pty Limited v Woollahra Council & Anr.*[2013].

The report, based on the Rose Bay Marina development, nominates the principal noise source to be noise emission from boat movements including manoeuvring to the allocated berths, docking and departing. In addition, the report also identifies other potential noise sources to include:

- construction noise.
- marina patron road vehicle noise;
- security alarms;
- marina patron noise – domestic pet, on board meetings, music and shouting during manoeuvring;
- mechanical services – air conditioning plants (temporary building)
- marina portable sewage pump out cart operation;
- vessel maintenance noise;
- marina maintenance.

The report is supplemented by a further acoustic report prepared by West and Associates entitled Cattle Bay Marina – Acoustic Services – Wave Attenuator Noise June 2015. The Report addressed public concern over potential noise impacts stemming from wave action hitting the attenuator.

The report concludes that there would be a drop in wave noise at the closest sensitive receivers due the location and design of the attenuator and its influence on the wave climate.

The report estimates the wave noise at the closest sensitive receivers would be 3-5 dB(A) quieter to that currently experienced.

Draft Construction and Operational Noise Management Plans have been prepared and submitted in support of the EIS. The Plans have been prepared by West and Associates P/L dated 7 April 2015.

Comment

The reports and Construction and Operational Noise Management Plans have been assessed by relevant Council Staff and the Environment Protection Authority and found to be suitable in terms of their form, content and required mitigation measures.

The Construction and Operational Noise Management Plans have been referenced in the both the Construction and Operational Environment Management Plans.

The following condition is recommended:

- **Prior to the issue of any subsequent construction certificate by the Principal Certifying Authority, Construction and Operational Noise Management Plans shall be submitted to Council for endorsement. The Plans shall be generally compliant with the Report prepared by West and Associates entitled 'Cattle Bay Marina Development Application Acoustic Report at Cattle Bay Road Eden' October 2014.**

The Construction and Operational Noise Management Plans shall be referenced in both the Construction and Operational Environmental Management Plans for the marina and shall be implemented to the satisfaction of Council.

Reason: To ensure that appropriate mitigation measures are adopted and implemented to ensure the acoustic amenity locality both during construction and operation of the marina.

Vibration Impacts

The EIS references German Standard DIN 4150 – 3 Structural Vibration – Effects of vibration on structures 1999.

Comment

The standard contains data for use in the determination and assessment of actions caused by vibrations on buildings which have been designed for predominantly stationary loading where data of this nature are not given in other standards or directives.

The EIS, drawing reference to the Standard, recommends a safety limit of 5mm/s for dwellings further than 20 metres from the construction site and acknowledges that the main sources of ground vibration would be associated with construction piling.

The EIS also advises that vibration levels generated by construction plant are unlikely to exceed the “safe limit” of 5mm/sec nominated in the Standard.

The EIS concludes that in relation to dwellings, a “safe limit of 3mm/sec is expected to be satisfied at a distance of 30 metres from the piling activity. This is based on given that the minimum distance between piling activities and existing dwellings is greater than 30 metres; it is unlikely that construction piling would have an adverse impact.

The matter has been subject to review by relevant Council staff who have advised that due diligence should be exercised and that any subsequent consent should be suitably conditioned to ensure compliance with the Standard and to ensure the structural integrity of dwellings in the immediate locality.

The following conditions are recommended:

- **To the satisfaction of Council, Section 4 of the Construction Environmental Management Plan is to be amended to reference and give effect to German Standard DIN 4150 – 3 – Effects of vibration on structures 1999 or any subsequent Standard.**
- **Prior to the issue of any subsequent construction certificate, the proponent shall submit to the Principal Certifying Authority a dilapidation report for all individual properties likely to be affected by vibration associated construction piling. Section 4 of the Construction Environmental Management Plan shall be amended to give effect to this requirement.**
- **Any substantiated damage caused to dwellings in the immediate locality of the marina development caused as a result of construction piling works shall be made good and repaired to a standard at least equivalent to that existing prior to commencement of construction. Such repair works will be undertaken as a priority to ensure minimal disruption and inconvenience to affected landowners.**

Reasons: These conditions are required to ensure the structural integrity of nearby dwellings during the construction stage of the marina development.

10.9 Navigation and Safety

The EIS nominates the two main water transport related issues to be:

- impact on navigation; and
- impact on swing moorings

The EIS concludes that the impact of the proposed wave attenuator and floating components to the marina are unlikely to impact on navigation given:

- the footprint of the proposed water based components of the marina would not impact on the approach channel and swing basin for the commercial operations in Eden harbour.
- the footprint of the proposed water based components to the marina would not impact on or restrict navigation to any future marina development proposed in the immediate locality.
- access around the foreshore to small recreational water craft would not be excluded.

The EIS acknowledges that a number of swing mooring affected by the proposed marina footprint will need to be re-located in consultation with key stakeholders and Roads and Maritime Services.

The EIS has also acknowledged that the proposed marina and wave attenuator would be designed in accordance with the following Standards to ensure their structural integrity and safe operation at all times:

- Australia Standard AS 3962-2001 'Guidelines for Design of Marinas';
- Australian Standard AS4997 – 2005 'Guidelines for the Design of Maritime Structures'; and
- NSW Maritime Authority Guidance Note 8.3.02

Comment

The relocation of the swing moorings is a matter between Crown Lands, Roads and Maritime Services and the lease holders.

No detailed engineering designs for the water based components of the marina have been submitted as part of the current application. Accordingly, it is considered appropriate to impose suitable conditions on any subsequent consent.

The following conditions are recommended:

- **The proposed marina development shall be designed and constructed in accordance with:**
 - **Australia Standard AS 3962-2001 'Guidelines for Design of Marinas'.**
 - **Australian Standard AS4997 – 2005 'Guidelines for the Design of Maritime Structures'.**
 - **NSW Maritime Authority Guidance Note 8.3.02**

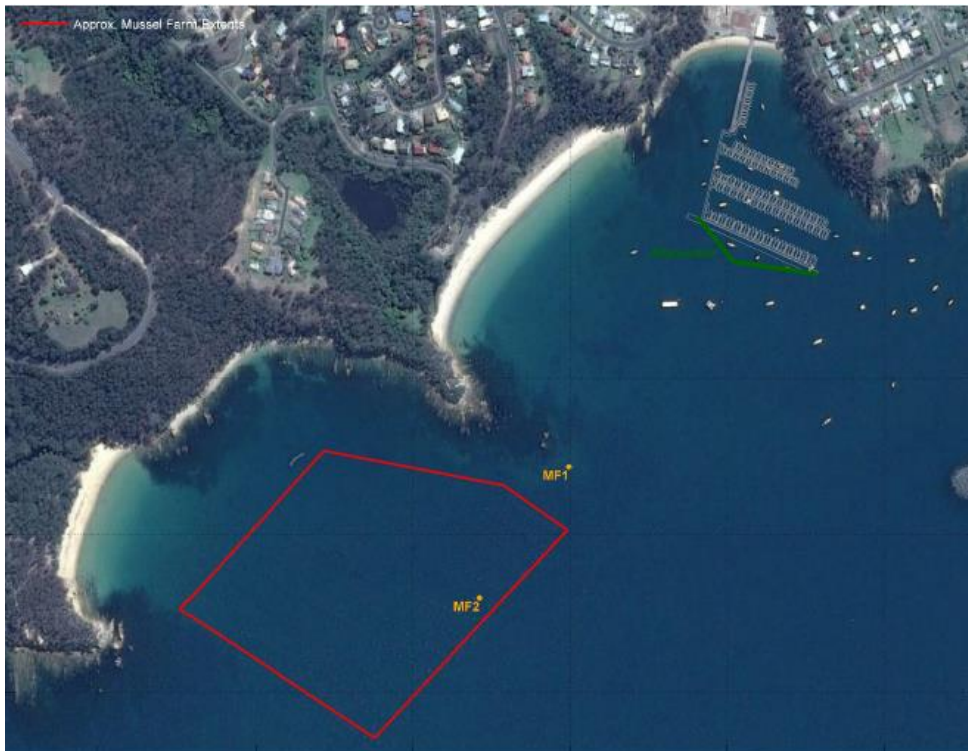
Prior to the issue of any subsequent construction certificate, a design verification statement shall be submitted to the Principle Certifying Authority confirming compliance with the above Standards.

The design verification statement shall be prepared by a suitably qualified and experienced professional to the satisfaction of the Principle Certifying Authority.
- **The Construction Environment Management Plan shall be amended accordingly to give effect to this condition.**

Reason: These conditions are required to ensure that the proposed marina development is designed and constructed to a standard which is structurally sound and does not compromise safe navigation, patron and public safety.

10.10 Impacts on Aquaculture

A commercial mussel farm is located to the west of Cocora Point approximately 470 metres to the south west of the proposed marina development.



Approximate extent of mussel farm (marked in red) in context with proposed marina development – Source: Cardno Cattle Bay Marina – Mussel Farm Impact Assessment

The operators of the mussel farm have been consulted throughout the notification and assessment process and, in response, have made 3 submissions raising concern over potential impacts associated with the construction and operation of the proposed marina.

Their concerns relate in summary to:

- potential impacts to Cocora Beach;
- potential impacts associated with changes in the wave climate generated by the wave attenuator;
- potential impacts on mussel farm infrastructure – long lines;
- potential impacts associated with increased turbidity in water column;
- potential increase in the incidence of ‘sea crab’ infestation;
- potential impact on ‘spat harvesting and development;
- proposed water testing protocols and associated costs;

- potential impacts associated with solid and liquid waste spills and intentional discharges;
- The use of mobile sewage pump out units is not acceptable – the associated risk of spillage relies on the skill of the operator, the size of the vessel and its on board liquid waste storage capacity.
- Inadequate land based toilet, washing and laundry facilities.
- loss of income in the event a “shellfish harvesting closure” occurs.

The EIS is supported by a report prepared by Marine Pollution Research Pty Ltd entitled “Cattle Bay Marina Project EIS – Aquatic Ecology Assessment May 2013.

The report provides an assessment of potential impacts associated with the construction and operation of the proposed marina development. As it relates to the protection of commercial fishing/aquaculture, the report concludes:

- risks of water pollution are avoided by the design of the marina including not providing fuel or slipway services, and the marina operation adopting a zero bilge, sewage and ships liquid waste discharge policy.
- copper ablation of waters of Cattle Bay from vessels antifoul paint coatings has been assessed against relevant detailed studies for other east coast coastal marinas and it is concluded that the water quality of the proposed marina would meet the ANZECC/ARMCANZ (2000) requirements for the protection of aquatic ecosystems and aquaculture activities in Twofold Bay.
- that the proposed location and construction of the marina would not impede these activities and appropriate management practices at the marina would mitigate any risk arising from any potential water quality issues, coastal process or introduced marine species impacts.

The report makes no specific recommendations aimed at commercial/aquaculture in Twofold Bay. However, the report makes a number of general recommendations to ensure environmental integrity which would mitigate potential impacts on commercial fishing/aquaculture. Accordingly, the report should be referenced in any subsequent construction environmental management plan and operational environmental management plan for implementation.

The EIS is also supported by a water quality management plan. The plan has been prepared by Ocean Environmental Consulting entitled ‘Cattle Bay Marina – Water Quality Management Plan #2 dated June 2015.

The plan, among other things, details specific mitigation measures relating to aquaculture activities in Twofold Bay. The report has been referenced earlier in this Report (see Section 3 of Appendix 10 Water Resources) and recommendations made for the inclusion of specific conditions in any subsequent consent.

The EIS is also supplemented by additional investigations and reports prepared by Royal Haskoning DHV entitled “Cattle Bay Marina - Response to Submissions on EIS Supplementary Statement on Wave Attenuator and Potential Impacts dated April

2015 and Cardno entitled “Cattle Bay Marina – Mussel Farm Impact Assessment dated March 2015.

See Section 10.5 of this Report.

The purpose of these reports being to assess, among other things, potential impacts on mussel farm infrastructure associated with a changing wave climate in the vicinity of the mussel farm before and after the installation of the proposed wave attenuator.

The reports conclude that the wave attenuator would only have a minimal effect on wave heights, wave direction and wave energy at the location of the mussel farm.

In addition, the application and all associated documents were subject to referral to the Department of Primary Industries Fisheries NSW.

The Department’s response has addressed the potential impacts associated with the construction and operation of the marina. In doing so, the Department has highlighted the importance of long term protection of sanitary water quality in the area as being paramount to the ongoing viability of the leases and human health standards.

The Department has raised no objection to the proposed marina development subject to conditions being imposed on any subsequent development consent to address environmental integrity and to mitigate potential impacts on the mussel farm.

The responses from the Department of Primary Industries – Fisheries NSW are discussed later in this report (see Section 12.5).

Potential impacts on the mussel farm during construction and operation of the marina have also been acknowledged in the Draft Construction and Operational Environmental Management Plans.

The plans acknowledge the importance of water quality for the purpose of sustaining a viable aquaculture industry. Mitigation measures are proposed in the form of protocols for testing and reporting and incident management.

Comment

The potential impacts on mussel farm infrastructure resulting from the construction and operation of the proposed marina development have been addressed as part of the assessment process.

Based on the information received with the application and the response of the Department of Primary Industries – Fisheries NSW, it is considered that the potential impacts on mussel farm infrastructure and the long term viability of the leases would be minimal and manageable provided suitable mitigation measures are deployed during both the construction and operational phases of the proposed marina.

To a degree, suitable measures have been incorporated into the Draft Construction and Operation Environmental Management Plans for the marina. Notwithstanding, recommendations have been made in this report regarding the content of the abovementioned plans which have been considered justified to address environmental integrity.

As recommended above, the report prepared by Marine Pollution Research Pty Ltd entitled "Cattle Bay Marina Project EIS – Aquatic Ecology Assessment May 2013" should be acknowledged in both the Construction Environmental Management Plan and Operational Environmental Management Plan.

The following condition is recommended:

- **The Draft Construction and Operational Environmental Management Plans shall be amended as appropriate to give reference to the mitigation measures and recommendations made in the Report prepared by Marine Pollution Research Pty Ltd entitled "Cattle Bay Marina Project EIS – Aquatic Ecology Assessment May 2013 to Council's satisfaction.**

Reason: To ensure environmental integrity in the interests of sustainable aquaculture.

10.11 Public Interest

The application has been subject to an extensive review by relevant Council Staff. In response, concern has been raised over the lack of consideration given in accommodating emergency situations which may arise from time to time through the general operation of a vessel and/or pursuit of recreational/lifestyle opportunities.

It is considered that the siting and design of the proposed marina development would more than adequately cater for those situations without compromising the aspirations of the proponent in providing a modern, well managed marina facility.

The marina development would not restrict access to the existing public reserve and it is proposed to require public access to the existing private wharf and car parking area should the application be approved.

The following condition is recommended:

- **Sections 6 and 18 of the Operational Environment Management Plan shall be amended to facilitate:**
 - **the provision of emergency berthing of vessels.**
 - **the casual and emergency overnight stay on vessels but limiting the period to a maximum of 6 nights to any calendar month.**
 - **the minor emergency repair and/or maintenance of vessels to restore sea worthiness.**

Reason: To provide safe anchorage in the interest of public safety.

11.0 PUBLIC SUBMISSIONS

The application has been subject to two separate public consultation processes. In response, Council has received in total 25 submissions comprising:

- Six submissions in support of the proposed marina development;
- Three submissions supporting the marina development but raising concern;
- Fifteen submissions objecting to the proposed marina development; and
- One submission expressing an undecided opinion.

11.1 Submissions in Support

In summary, those submissions in support of the proposed marina development drew reference to:

- potential economic benefits to Eden and Shire generally;
- promotion of tourism and lifestyle opportunity;
- would be in keeping with Eden's maritime heritage;
- the marina being a much needed facility in the locality and to the lower south coast generally; and
- would contribute to the Port of Eden as a working port

Comment

The content of these submissions have been addressed throughout the body of this report.

11.2 Submissions in Support - Concerns Raised

In summary, whilst generally supporting the proposed marina development in principle, the submissions raised concern in regard to the following:

11.2.1 Impact on swing moorings

Whilst raising no objection to the proposed marina development, concern has been raised by a licence holder over the potential loss/relocation of the mooring.

Comment has been received that the individual mooring has been long standing, is well protected from the elements and is conveniently located close to the Cattle Bay foreshore thus ensuring ease of access. Any new location would be too exposed and difficult and dangerous to access.

It is maintained by the licence holder that the only safe option would be to make a marina berth available for the mooring of his vessel.

Comment

As previously outlined in this report the matter of the relocation of the swing moorings is one between Crown Lands, Roads and Maritime Services and licence holders.

11.2.2 Pedestrian Access

There are no planned pedestrian linkages between the proposed marina development, town centre, Snug Cove and Cocora Beach. The provision of convenient pedestrian access is considered to be of high importance in providing suitable access to services and amenities to the boating fraternity.

Comment

The current application makes no provision for suitable and convenient pedestrian access between the proposed marina development, town centre, Snug Cove and Cocora Beach. Whilst the construction of pedestrian linkages would be desirable, their construction is considered beyond the scope of the proposed marina development and Council's adopted works program.

As previously detailed in this Report, the proponent as part of the Major Project Concept Approval (05_0032) has dedicated in subdivision a foreshore public reserve which has been vested in Council's ownership. It is considered that the dedication of the land as public reserve represents a significant contribution in the provision of public access.

Section 94A contributions would be levied and allocated in accordance with Council adopted Policy, but not necessarily to complement the proposed marina development.

11.2.3 Emergency / Health Services

The site is not conveniently accessible to ambulance and local health services due to steep terrain and absence of a pedestrian network.

Comment

Both the land and water based components of the proposed marina development would be serviced by a sealed Council maintained road and constructed carparking and driveway areas within the development. Accordingly, access to emergency service vehicles would be guaranteed.

The absence of a convenient and suitable pedestrian network is not considered essential to the availability of local health services. Whilst the site is not on a local bus route, a local taxi service operates within Eden. Pedestrian access between the marina and town centre would still be maintained within the existing road reserves albeit somewhat undulating and steep in sections.

11.2.4 Public Access

Public access to the existing wharf must be maintained.

Comment

As previously detailed in this report, there is no lawful public access to the existing wharf at the present time. Public access is to be formalised given its new role and its recreational and tourism potential. However, any formal access arrangement would be managed by the marina operator in the interests of safety and security.

See Sections 4.3 and 10.2 of this Report.

11.2.5 Potential Impacts on Cocora Beach

The potential impact of reflected wave action on Cocora Beach is a serious concern given its environmental setting and recreational opportunities. Cocora Beach is one of Eden's greatest natural assets. Council needs to be satisfied that any potential impact has been rigorously investigated and assessed.

Comment

The EIS is supplemented by a number of technical reports which have assessed the potential impact of the proposed marina development on coastal processes and its influence on the characteristics of the Cattle Bay and Cocora Beach foreshores.

Collectively, the reports concluded that the proposed marina development would have a minimal impact on foreshore character (visual quality and alignment) and that the passive and active recreational opportunities currently provided by these foreshore areas and enjoyed by the general public, would not be compromised.

The investigations and recommendations contained within the reports have been reviewed by relevant Council Staff and State Agencies having regard to current legislation requirements and standards. It is considered that the process of assessment and reporting has been rigorous and suitably quantifies and evaluates potential impacts associated with the construction and operation of the proposed marina.

11.2.6 Potential Pollution Risk

The proposed marina has the potential to contribute significantly to waterway pollution albeit visiting vessels are likely to have on board waste containment systems. Marina litter will find its way into the waterway either by intention or due to wind action. Litter must be collected regularly and suitably disposed of to ensure environmental integrity.

Comment

The marina would be serviced by a minimum of two mobile sewage pump out units. The units would discharge to Council's land based reticulated town sewer system.

Mobile sewage pump out units are widely and successfully used in marina developments nationwide. They do not rely on the vessel's owner accessing a static

dedicated berthing area and pump out facility at the marina. It enables the marina operator to be more proactive in compliance with operational standards of any subsequent environmental protection licence and operational environmental management plan.

The operational efficiency of the pump out units would be embodied in the Operational Environmental Management Plan and Marina Occupation Agreement between the marina owner and vessel owner/operator.

The proposed system of sewage management has been assessed by Council staff and State Agencies and is considered a suitable management system for the proposed marina.

Day to day litter control during the construction and operation of the marina would be the responsibility of the contractor in the first instance then the marina manager thereafter. Litter control would be addressed in the Construction and Operational Environmental Management Plans for the marina.

The controls contained within the Draft Management Plans have been reviewed by Council staff and are considered to be appropriate. Further the Environment Protection Authority has specifically addressed the matter in its General Terms of Approval for inclusion in any subsequent consent.

11.2.7 Timelines for Completion

The fact that the proponent has not physically commenced the endorsed mixed tourist and residential development on the adjoining lands and the fact that there has been no timelines given in the current application for the completion of the aforementioned development and now proposed marina development should be of concern to Council.

Council should obtain a staging plan from the proponent covering the completion of the two developments inclusive of an agreed timeline.

Comment

The mixed tourist and residential development is subject to a separate Major Project Concept Approval (05_0032) in August 2008. Requiring a staging plan for completion of the development as part of the marina application is not appropriate.

11.2.8 Reference to the Port of Eden Marina Concept.

The EIS and its supporting documents suggest that the Port of Eden Marina Concept should be subservient to the Cattle Bay Marina proposal. The suggestion is not supported in the strongest terms.

Comment

This is not a relevant planning consideration.

11.2.9 Inadequate marina support infrastructure

There is no boat launching ramp in the proposed marina development. Given increasing pressure on the Quarantine Bay boat ramp, particularly over the summer months, a suitable boat launching ramp should be incorporated in the design of the proposed marina.

Comment

This issue is not relevant to the proposed marina development.

11.2.10 Potential Noise Impacts

Vessel maintenance and repairs have the potential to impact on the amenity of adjoining and adjacent lands by reason of noise. Any maintenance should be carried out during daytime hours.

Comment

The detail in the EIS indicates that routine minor servicing and maintenance of vessels would be permitted at the marina with major servicing being carried out by specialist marine services in the Port of Eden.

The potential impacts of noise on adjoining and adjacent lands have been assessed by relevant Council Staff and Environment Protection Authority. On review, it is considered that potential noise impacts have been thoroughly addressed and that any associated impacts can be mitigated by the imposition of suitable conditions on any subsequent consent and the adoption of an Operational Environmental Management Plan and Operational Noise Management Plan.

11.2.11 Potential Light Source Impacts

For aesthetic and amenity issues lighting associated with the operation of the marina should be of a type which does not impact on adjoining and adjacent lands.

Comment

The lighting in and around the marina would take two forms, being required navigational lighting and operational lighting such as directional and security lighting.

The Operational Environmental Management Plan for the proposed marina has acknowledged that navigational lighting would need to comply with international standards (System A of the International Association of Lighthouse Authorities) and that all operational indoor and outdoor lighting must be designed and installed in accordance with AS 4282-1997; Control of obtrusive effects of outdoor lighting.

11.3 Submissions Objecting

The submissions raise a number of concerns regarding the construction and operational characteristics of the proposed marina development. In summary, they are:

11.3.1 Potential Biodiversity Impacts

A number of submissions raise concern over the potential impact of the marina on biodiversity generally and the scope of the investigations and reporting as presented in the EIS and supporting documentation.

Comment

The EIS and associated specialist reports have extensively addressed and evaluated the potential impacts on biodiversity both during construction and operational stages of the proposed marina development.

Collectively, the EIS and specialist reports have concluded that the impact of the proposed marina on biodiversity would be minimal and any impact can be mitigated through adoption and implementation of appropriate Construction and Operational Environmental Management Plans.

Draft Construction and Operational Environmental Management Plans have been prepared (see Appendices 6 and 7) and together with the detail in the EIS, have been reviewed by relevant Council Staff and State Agencies. On review, the Draft plans are considered to be appropriate, however a number of amendments have been recommended throughout the content of this Report which, if implemented would strengthen the requirements of the Plans as they relate to biodiversity.

Given the above, it is considered that the biodiversity impacts have been adequately addressed and evaluated to enable an informed decision to be made on the appropriateness of the proposed marina development in its environmental setting.

11.3.2 Potential Site Contamination

Concern has been raised over potential site contamination inclusive of the Cattle Bay Beach and immediate waterway stemming from past cannery operations and the impact on environmental integrity should contaminants be exposed during construction and ongoing operation of the marina.

Comment

Potential site contamination has been addressed in Section 4 of Appendix 10 to this Report and suitable conditions recommended to satisfy Council's due diligence obligations.

11.3.3 Potential Pollution of Waterway – water quality

Concern has been expressed that construction and ongoing operation of the proposed marina would have the potential to pollute the waterway to the detriment of the environment and as a result, would diminish tourism and recreational opportunities currently enjoyed by community at large.

Comment

The EIS and associated specialist reports have extensively addressed and evaluated the potential impact on the water quality during both construction and operational stages of the proposed marina development.

Collectively, the EIS and specialist reports have concluded that the potential impact on water quality is minimal and/or manageable through the preparation, adoption and implementation of Construction and Operational Environmental Management Plans.

As previously advised in this report, Draft Construction and Operational Environmental Management Plans have been prepared and together with the detail in the EIS.

The EIS and specialists reports have been reviewed by Council staff and relevant State Agencies and a number of amendments have been recommended throughout the content of this Report which, if implemented would strengthen the requirements of the Plans as they relate to water quality.

Given the above, it is considered that the potential for the proposed marina to impact on water quality has been adequately addressed and evaluated to enable an informed decision to be made on the appropriateness of the proposed marina development in its environmental setting. Any potential impact on tourism and recreational opportunities would be minimal.

11.3.4 Potential impacts on Cattle Bay and Cocora Beaches – beach alignment.

Concern has been expressed that the construction of the marina development, more specifically the wave attenuator, would impact on the alignment of both Cattle Bay Beach and Cocora Beach with resultant impact on tourism and recreational opportunities (particularly recreational fishing).

Comment

The EIS and associated reports have extensively addressed and evaluated sediment movement and shoreline stability and have concluded that Cattle Bay Beach would become more sheltered which is likely to result in a change in its alignment over time. The beach would effectively rotate in a clockwise direction which would result in a narrowing of the beach at its western end (in the order of 8 metres) and a wider beach profile at its eastern end (in the order of 6 metres). The beach would not be lost.

The associated impact on marine habitat brought about by the accretion of sediment at the eastern end of the beach would be minimal.

Significant changes to the alignment of Cocora Beach are not expected.

The EIS and supporting Reports have been reviewed by relevant Council Staff and State Agencies with the amendment criteria and conclusion supported. No concern has been specifically raised in relation to the form and content of the reporting or the nature and extent of the potential impacts.

On that basis, whilst there is a recognised impact, particularly to the alignment of Cattle Bay Beach, it is considered that the nature and extent of impact would be minimal and would not result in any significant impact on tourism and recreational opportunities.

11.3.5 Preclusion/Restriction of Public Access - across the foreshore/existing wharf

Concern has been expressed that public access to the existing wharf and foreshore areas would be precluded or restricted by the proposed marina development either physically or by way of adopted marina management processes.

Comment

The issues associated with public access across the foreshore and over the existing and proposed elements of the land and water based components of the marina development have been detailed in the body of this report.

Public access would be provided to all elements of the proposed marina development.

11.3.6 Relocation of swing mooring – practicality, cost and logistics

Concern has been expressed in relation to the practicality, costs and logistics in relocating existing swing mooring affected by the waterway footprint of the proposed marina.

Comment

The relocation of the existing swing moorings is a matter for Crown Lands as the owner, Roads and Maritime Services and current lease holders.

11.3.7 Visual Impact

Concern has been expressed that the proposed marina development would have an adverse impact on the visual quality of Cattle Bay and the greater Twofold Bay visual catchment.

Comment

The impact of the proposed marina development on the visual character of Cattle Bay and Twofold Bay has been addressed in Section 10.7 of this Report.

After inspections from various points around Twofold Bay, Staff have concluded that any potential impact would be minimal given the scope of the development and its siting and design in context with its natural setting. Nonetheless, conditions have been recommended for inclusion on any subsequent consent addressing the appearance of the proposed building, the need for the provision of suitable site landscaping and lighting.

11.3.8 Noise Impacts – wave attenuator, vessels (berthed/underway), vessel maintenance and patron noise.

Concern has been expressed that the noise associated with the operation of vessels, vessel maintenance, marina patron noise and wave noise would adversely impact on the amenity of adjoining and adjacent lands (public and private).

Comment

Potential noise impacts associated with the proposed marina development have been documented and assessed in Section 10.8 of this report.

The EIS is supported by an acoustic report prepared by West and Associates Pty Ltd entitled 'Cattle Bay Marina Development Application Acoustic Report at Cattle Bay Road Eden' October 2014 and has been further supplemented by an acoustic report prepared by West and Associates entitled Cattle Bay Marina – Acoustic Services – Wave Attenuator Noise June 2015.

Draft Construction and Operational Noise Management Plans have been prepared and submitted in support of the EIS. The Plans have been prepared by West and Associates P/L dated 7 April 2015.

The reports and Construction and Operational Noise Management Plans have been assessed by relevant Council Staff and the Environment Protection Authority and found to be suitable in terms of their form, content and required mitigation measures.

The Construction and Operational Noise Management Plans have been referenced in both the Construction and Operational Environment Management Plans. It is considered the implementation of the Plans would ensure the acoustic amenity of the locality and more specifically, those residential properties identified in the reporting.

11.3.9 Economic Viability

In the opinion of the objector, the viability of the proposed marina development has not been demonstrated.

Comment

In response to the objector's claims, the proponent has advised that the proposed marina is viable and is supported by sound business case fundamentals as presented in the EIS and the supplementary report prepared by Corious Marine Management and Training Solutions entitled 'Eden Marina Project Report' date June 2012.

11.3.10 Poor Infrastructure Networks – sewer, roads and pedestrian linkages

Concern has been expressed that necessary infrastructure required to support the development of a marina is inadequate and that significant upgrades are required.

Comment

The adequacy of land based Council infrastructure has been addressed earlier in this report and recommendations made which would ensure the adequate provision of service infrastructure.

In respect to the adequacy of pedestrian linkages, their construction and ongoing maintenance is beyond the scope of the current marina proposal and Council's adopted works program.

11.3.11 Lack of Consideration to Aboriginal Culture and Heritage – Bundian Way construction not catered for in proposal.

Concern has been expressed that little consideration has been given to the importance of Aboriginal culture and heritage in the planning and design of the proposed marina development.

The proposed marina development, through its planning and design, should assist in the development of a safe pedestrian access linking Cattle Bay and Cocora Beach over the route of the Bundian Way.

The proponents of proposed marina developments at Snug Cove and Cattle Bay (including the Crown) should be required to provide adequate public pedestrian access as a basic requirement of these proposed developments and such, a requirement should be stipulated as a mandatory condition on any subsequent development approval.

Comment

The concerns expressed in the submission have been addressed in Section 10.6 of this report.

It is considered that the importance and prominence of the Bundian Way has been secured in perpetuity with the dedication of the public reserve across the foreshore to the marina site. However, the physical construction of the route between the subject site and Snug Cove and Cocora Beach is considered beyond the scope of the proposed marina development and as such, is not considered reasonable or justified.

11.3.12 Inadequate Support Infrastructure

Concern has been expressed that the proposed marina development is not supported by critical on-site facilities such as, shops, adequate toilet/shower facilities, slipway, chandlery and fuel.

Comment

Facilities such as shops, slipways chandlery and fuel are readily available within the town centre and/or Snug Cove which would be easily accessed by road or the waterway.

The provision of adequate on-site toilet/shower facilities has been reviewed by relevant Council staff and State Agencies. As originally proposed, these facilities were considered inadequate to cater for the size of the marina and the proponent was advised accordingly as to Council's requirements.

Council Staff considered it justified to require the provision of an additional unisex sanitary compartment with shower and an outside water shower. Council's position was conveyed to the proponent and has been accepted.

11.3.13 Inappropriate referencing to Port of Eden Marina Development

Concern has been expressed that the EIS has misrepresented the status of the Port of Eden Marina development in terms of progress and funding.

Comment

The submission was forwarded to the proponent who has acknowledged the concerns expressed in the submission. There is no development application currently before Council for a further marina proposal.

11.3.14 Appearance and Maintenance

The objector has expressed the view that the proponent has demonstrated a total disregard for the appearance and maintenance of the Cattle Bay site inclusive of the existing wharf, Council's reserve, foreshore and waterway areas and the environment generally.

The objector has expressed the view that based on past performance, there is a question of doubt over the appropriateness of the proposed marina development and the proponent's intent to commence and complete both the now proposed marina development and the mixed tourist and residential development on the adjoining lands.

Comment

It is considered that the views expressed by the objector are not valid grounds on which to base an assessment and determination of the current application.

11.3.15 Potential Impacts on Aquaculture

Concern has been expressed by the operators of the aquaculture leases, that the construction and operation of the proposed marina will have an impact on infrastructure and water quality to the detriment of a viable aquaculture industry.

Comment

The potential impacts of the proposed marina development on the viability of the aquaculture leases have been addressed in Section 10.10 of this report.

11.3.16 Timelines for completion

Concern has been expressed that there has been no time line given in the current application for commencement or completion of the proposed marina development.

Comment

Under the provisions of the Environmental Planning and Assessment Act 1979 no timeline for commencement or completion of the proposal has been submitted. The applicant would have 5 years from the endorsement date of any subsequent consent to establish a physical commencement.

11.4 Unqualified Submission

Council is in receipt of a submission which expresses an interest in potential view impacts associated with the proposed marina development and seeking advice as to whether the application was available for viewing in an electronic format.

As requested, Council Staff provided detail on the availability of the application and extended an invitation to discuss any matters relating to the proposed marina development should they arise.

No further comment was received by Council from the interested party.

11.5 General Comment

The public submission summary above represents a summary of the issues raised in the submissions received during the public exhibition of the application. It is considered that the issues raised have been addressed in the EIS, supporting documentation and draft conditions of consent.

12.0 AGENCY SUBMISSIONS

The application was referred to a number of State Agencies for assessment, comment and/or requirements on two separate occasions.

The following represents a summary of the submissions.

12.1 Trade and Investment Crown Lands

In the Crown's initial response to Council dated 17 February 2015 the following observations and comments were made in relation to:

- Confirming landowners consent.
- Crown Lands is currently considering a request from the proponent to enter into direct negotiations over the leasing of Crown Land to facilitate to water based components of the proposed marina.
- There is no lease over the existing wharf. A Licence is in place. Any lease of the wharf and conditions that may be attached to the same, including public access, will be considered in any lease negotiations that may take place for the whole development.
- Works associated with the refurbishment of the existing wharf have not been specified in the application. The exact nature of the works associated with the refurbishment and maintenance of the wharf will need to be determined as part of any future lease negotiations.
- The EIS needs to be updated to refer to the amended LEP maps and the application of the same.
- Irrespective of any consent or approval granted by another public authority, work or occupation of Crown Land cannot commence without a current tenure from NSW Trade and 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 the proponent. Following the submission of a lease application, a draft lease agreement with appropriate special conditions will be prepared.

No specific conditions were provided for inclusion as part of any subsequent development consent.

The comments of the Crown were conveyed to the proponent. In response the proponent acknowledged the Crown's advice and in doing so, provided further advice on the refurbishment and maintenance of the existing wharf and confirmed that the advice contained in the EIS as it related to land zoning was correct.

The refurbishment and maintenance statement has been documented in Section 4.5 and 4.6.5 of this report.

The additional information was conveyed to the Crown and in response, the Crown advised by email dated 24 June 2015 that it had no further comment.

Whilst no specific conditions have been recommended by Crown Lands it is considered that the following condition should be imposed on any subsequent consent to acknowledge the requirements of the Crown in relation to the lease of Crown Land.

- **Prior to the issue of any subsequent construction certificate by the Principal Certifying Authority, the proponent shall enter into an appropriate lease arrangement with Trade and Investment Crown Lands over the occupation of Crown Lands associated with the construction and operation of the proposed marina development.**

A copy of the lease shall be submitted to Council prior to the commencement of works or occupation of the lands nominated in the lease.

Reason: To ensure the requirements of Trade and Investment Crown Lands.

12.2 Department of Defence

The Department in its response to Council has advised that the proposed marina development is unlikely to disrupt Defence activities conducted on the multipurpose naval wharf and on that basis, has raised no objection to the proposed marina development.

12.3 Department of Planning

The Department raised no objection to the proposed marina development and directed Council's attention to the Director General's Requirements for the

development and the need to consider the submissions from State Agencies given their fields of expertise, particularly in relation to potential environmental impacts.

The Department in its response also recognised the strategic importance of Snug Cove to Eden as referenced in the Snug Cove and Environs Master Plan and that the proposed marina has potential economic benefits through investment and employment opportunities. The Department also made comment that the proposed marina may act as a catalyst to encourage further development at Snug Cove and in the Eden town centre.

12.4 Environment Protection Authority

In its initial response to Council dated 16 December 2014, the Authority advised Council that it was not in a position to issue its General Terms of Approval for the proposed marina development on the basis that the information contained within the application failed to address the requirements of the Authority.

The Authority advised that further consideration must be given to:

- Air Quality issues – operational phase only;
- Noise and vibration – construction and operational phases;
- Water quality – construction and operational phases: and
- Content of the submitted environmental management plan

The concerns raised by the Authority were subsequently referred to the proponent for consideration.

In response, the proponent provided additional detail which was referred to the Authority on 28 April 2015. The Authority by email dated 22 June 2015 advised Council that it had reviewed the additional information supplied by the proponent but it was still not in a position to issue its General Terms of Approval. Effectively, the issues documented in the Authority's initial submission had not been appropriately addressed.

The Authority in its response was most specific as to the shortcomings in the level of detail supplied by the proponent.

The Authority's response was conveyed to the proponent. The proponent provided additional information to Council on the 9 July 2015 which was subsequently referred to the Authority on the 15 July 2015.

The Authority advised Council on 5 August 2015 that it was still not in a position to issue its General Terms of Approval as the level of detail relating to potential noise impacts had not been properly addressed.

The Authority's response was forwarded to the proponent.

The proponent submitted a revised acoustic report on 18 August 2015 which was referred to the Authority on 27 August 2015.

The Authority advised Council on 16 October 2015 that it had issued the General Terms of Approval for the proposed marina development. The General Terms of Approval would be imposed in any subsequent development consent issued for the proposed marina.

The following condition is recommended:

- **The marina development shall comply with the General Terms of Approval issued by the NSW Environment Protection Authority on 16 October 2015.**

Note: The General Terms of Approval issued by the Authority are provided as Attachment A to this development consent.

12.5 Department of Primary Industries Fisheries NSW

The Department in its initial response to Council dated 16 December 2014 confirmed that it would be prepared to issue a Part 7 Permit under the Fisheries Management Act 2013 to enable the construction of the proposed marina development and that it raised no object to the issue of a development consent subject to specific General Terms of Approval be imposed as detailed in the Departments response.

However, more generally, the Department indicated that it had concerns over the operational impacts of the proposed marina on the aquatic environment, aquaculture and recreational fishing.

The Department's response specifically acknowledged the presence of the mussel farm leases to the south west of Cocora Point and the importance of protecting water quality to ensure human health standards and the ongoing viability of the leases.

The Department also raised concern over sewage waste from moored vessels entering the waterway and questioned the apparent lack of adequate onshore toilet and laundry facilities.

Concern was also expressed in relation to:

- bilge water disposal;
- the location super yacht berthing in the marina and the apparent lack of keel clearance to the seabed;
- the potential impact on recreational fishing opportunity if public access to the existing wharf is precluded as part of the development; and
- the relocation of existing swing moorings and associated potential impacts on existing seagrass habitat.

Accordingly the Department, in addition to the required General Terms of Approval, recommended the inclusion of the following conditions on any subsequent consent:

- Onshore toilet, shower and laundry facilities are to be provided for the use of marina patrons.
- An operational Environmental Management Plan (OEMP) is to be developed and provided to Fisheries NSW for comment and approval prior to the commencement of operation.
- An introduced marine species (IMS) management plan for construction and operation be developed and referred to Fisheries NSW for comment and approval prior to commencement of any works.
- An additional principle, “That no relocation of swing moorings are to be placed into or in the close proximity to seagrass beds” be included in the swing mooring relocation Plan.
- That the finalised proposal(s) for the relocation of swing mooring be referred to Fisheries NSW for approval prior to the commencement of work.
- The proponent must notify the aquaculture permit holder/s at least one week prior to the commencement of any work (e.g. Piling) that may result in the disturbance of any sediment.
- If any marine construction or operational works cause water quality impacts that result in the aquaculture lease areas being closed to harvest by the NSW Food Authority, the proponent must cease such works immediately and not recommence until the risk of adverse water quality impacts has been eliminated.
- If a shellfish harvesting closure occurs as a result of water quality deterioration caused by construction or operation of the marina, the proponent in co-operation with the aquaculture permit holder/s is to undertake testing, at the proponent’s cost, of the farmed shellfish to determine when shellfish is suitable for human consumption and the closure to harvest can be lifted.
- The proponent is to develop signage in conjunction with Fisheries NSW which must be installed and maintained at prominent locations with the proposed marina development, to notify patrons of the location of the aquaculture leases and the need to be vigilant in regard to maintaining water quality and avoiding collisions.
- The jetty and marina facility is to remain accessible to non-paying recreational users during marina opening hours as outlined in Section 3.2.9 of the EIS
- The proponent is to keep detailed records in relation to the use and effectiveness of the “muck truck”, including dates, times, name and berth of vessels using the machine, number of users and the volume and type of waste removed (sewage, greywater, bilge water).
- Independent audits of the operation of the marina are to be conducted after 12 months and again after 3 years of operation and thereafter at 5 yearly intervals. Audits are to be conducted by suitably qualified practitioners; a copy of each audit report is to be provided to Fisheries NSW within 3 months.

The Department's response was conveyed to the proponent on 23 January 2015. In response, the proponent provided additional information for consideration by the Department.

By letter dated 28 May 2015, the Department advised Council that the amending detail addressed some, but not all of the Department's concerns as previously documented.

Notwithstanding, the Department confirmed that it would be prepared to issue a Part 7 Permit under the Fisheries Management Act 2013 to enable the construction of the proposed marina development and that it raised no object to the issue of a development consent subject to revised General Terms of Approval as detailed in the Department's latest response.

In providing comment, the Department still raised concerns regarding:

- water quality security and the potential impact on aquaculture;
- introduction of pest species transported on vessel hulls from other ports;
- an apparent inadequacy of onshore facilities;
- super yacht berthing; and
- the capacity of the "muck truck".

Accordingly the Department has recommended amendments to the Draft Construction Environmental Management Plans addressing standards and actions to be implemented during construction relating to soil and water management control and water quality security – monitoring turbidity daily to ensure that there are no visible turbid plumes entering the environment.

The Department has also recommended amendments to the Draft Operational Environmental Management Plan requiring:

- the need for daily monitoring for leaks and spills and to prevent discharge of bilge water and grey water from sinks, showers or other sources; and
- faecal coliform levels being included in post construction monitoring of water quality testing program.

The Department has also recommended the inclusion of the following conditions:

- Onshore toilet, shower and laundry facilities are to be provided for the use of marina patrons.
- An amended Operational Environmental management Plan (OEMP) incorporating Fisheries recommendations is to be developed and provided to Fisheries NSW for comment and approval prior to the commencement of operation.

- An introduced marine species (IMS) management plan for construction and operation be developed and referred to Fisheries NSW for comment and approval prior to commencement of any works.
- That the relocated moorings be replaced with seagrass friendly moorings if placed into or in close proximity to seagrass beds.
- That the finalised proposal(s) for the relocation of swing mooring be referred to Fisheries NSW for approval prior to the commencement of work.
- The policy for public access of the jetty and marina facility as outlined in Section 3.2.9 of the EIS is adopted and enforced, specifically that the existing jetty remains accessible to the public 24 hours a day, and the marina be made available to the public during marina opening hours (summer, daylight saving 7am – 6pm, winter, non-daylight saving 7am to 5pm).
- The proponent is to keep detailed records in relation to the use and effectiveness of the “muck truck”, including dates, times, name and berth of vessels using the machine, number of users and the volume and type of waste removed (sewage, greywater, bilge water).
- That copies of the test reports produced from the port construction water quality testing program be retained by the operator for a period of 3 years and be provided to Fisheries NSW on request.

The Department also provided additional comment specifically relating to the aquaculture leases noting the proponent has agreed to additional onshore toilets and showers and that the number of mobile sewage pump out carts would be increased from 1 to 2.

The following conditions have been recommended for inclusion on any subsequent Consent:

- The mitigation measures listed in Section 4.3 of the water Quality Management Plan (Version 1, 31 march 2015) and the pre and post water quality monitoring program detailed in Version 2 of the Water Quality management Plan (23 June 2015) are implemented in full.
- The proponent develops signage in conjunction with NSW DPI which must be installed and maintained at prominent locations within the marina to notify patrons of the location of the aquaculture leases and the need to be vigilant regarding maintaining water quality.
- A notification process is arranged whereby the aquaculture lease operator is immediately informed by the marina of any illegal or accidental vessel discharge within the marina.

Comment

Based on the advice of the Department the following condition is recommended:

- **The marina development shall comply with the General Terms of Approval and supplementary conditions issued by the Department of Primary Industries Fisheries NSW on 28 May 2015 and 18 August 2015.**

Note: The General Terms of Approval and supplementary conditions issued by the Department are provided as Attachment B to this development consent.

12.6 Office of Environment and Heritage

The Office of Environment and Heritage (OEH), in its response to Council dated 12 December 2014, documented a number of concerns and deficiencies in the level of information contained within the application. The issues related to:

- Aboriginal cultural heritage;
- Geotechnical;
- Swing mooring relocation;
- Flooding; and
- Marine flora and fauna impacts

The concerns raised by OEH were subsequently referred to the proponent for consideration on the 23 January 2015.

In response, the proponent on the 10 April 2015 provided additional detail addressing the specifics of the OEH submission. The additional information was subsequent referred to OEH on the 28 April 2015.

OEH in its response to Council dated 28 May 2015, advised that a revision of the additional detail had been undertaken and that the only remaining concerns related to potential impacts on shore birds and waders, marine mammals and the cumulative impacts on marine fauna which will result from both Cattle Bay and the extensions of Snug Cove Wharf.

The submission from OEH was subsequently referred to the proponent on 1 June 2015 for consideration.

Additional information was submitted by the proponent on 9 July 2015 and subsequently referred to OEH on 15 July 2015.

In response, OEH advised Council by letter dated 18 August 2015 that the additional information had been assessed and that overall, OEH is satisfied that the biodiversity impacts associated with the proposed marina development had been qualified and

that with the appropriate mitigation measures described in the Construction and Operational Environmental Management Plans including adherence to the Piling Noise Guidelines (2012) should not have a significant impact on biodiversity.

Comment

In its correspondence, the Office of Environment and Heritage made no request for the inclusion of any specific conditions in any subsequent consent to maintain biodiversity. The reference above to the Piling Noise Guidelines (2012) has been addressed in the recommended conditions contained in Section 10.3 of the Report.

Section 10.6 of this report addresses Aboriginal Cultural Heritage.

12.7 Roads and Maritime Services

The Roads and Maritime Services (RMS) in its response to Council dated 11 December 2014 advised that on navigation grounds the following conditions are required to be imposed on any subsequent consent:

- A network of Aids to Navigation be installed in compliance with System A of the International Association of Lighthouse Authorities (IALA)
- The above network be approved by Roads and Maritime Services.

The Service in its response also raised concern in relation to:

- Loss of available navigable waters and amenity to the general boating community through the construction of the wave attenuator and marina facility
- Impact to existing mooring licence holders by way of loss of available water and amenity
- The wave attenuator and the impacts this facility would have with regard to any deflecting wave action on existing vessels (both moored and berthed) and waterside land and foreshore areas in Cattle Bay and within Eden harbour.

RMS advised that a considered and collective inter-agency response should occur addressing concerns and conditions warranted, and that consent should not be provided until this engagement has happened.

The concerns raised by RMS were subsequently referred to the proponent for consideration on the 23 January 2015.

On the 10 April 2015 the proponent provided additional detail which was referred to RMS on 28 April 2015.

In response, RMS by letter dated 3 June 2015 advised Council that it had reviewed the additional information and that no objection to the proposed marina development is raised in regard to safe navigation subject to a number of recommended conditions being imposed on any subsequent consent.

Comment

The recommended conditions are considered reasonable and justified being:

- in the interest maritime safety;
- required to direct land tenure (Crown Lease/licence) decision making except for the relocation of the swing moorings which is a separate matter between Crown Lands as the owner, RMS and existing lease holders

The following conditions are recommended as documented by RMS:

- **A Network of Aids to Navigation shall be installed on and around the proposed marina in consultation with Roads and Maritime Services (and in compliance with System A of the International Association of Lighthouse Authorities) at the proponent's cost.**
- **The permissive occupancy licence issued by NSW Crown Lands for the proposed marina shall not include waters west of the fixed marina structure, or waters to the east of the fixed marina structure without further consultation with Roads and Maritime Services (to date, the extent of any occupation licence has not been provided to Roads and Maritime Services, and this will have implications for mooring relocation and navigation).**

12.8 Port Authority of New South Wales

The Authority provided the following comments;

- Prior to the commencement of waterside construction works, Harbour Master approval for the proposal is required to be obtained under Clause 67 of the Management of Waters and Waterside Lands Regulations – NSW in relation to the proposed disturbance of the bed of a 'special port'.
- Consultation with the Harbour Master for the Port of Eden regarding the proposed development should occur to discuss the requirements for the Harbour Master approval as well as to deal with concerns relating to lighting of the development during construction and operation and impacts on shipping navigation.

The concerns raised by the Authority were subsequently referred to the proponent for consideration on the 23 January 2015.

The proponent's response provided additional detail and was forwarded to the Authority on the 28 April 2015. In response the Authority advised that the additional information did not address its initial request for the Harbour Master to be consulted regarding the lighting of the development during construction and operation and any impacts on shipping navigation.

The Authority also made recommendations in relation to the content of the Construction and Operational Environmental Management Plans in regard to hazard management water quality, swing mooring relocation.

Comment

The Authority in its response did not require the imposition of specific conditions on any subsequent consent.

However it is considered that based on the Authority's comments the following conditions would be appropriate:

- **Prior to the commencement of waterside construction works, Harbour Master approval for the proposal is required to be obtained under Clause 67 of the Management of Waters and Waterside Lands Regulations – NSW in relation to the proposed disturbance of the bed of a 'special port'.**
- **Consultation with the Harbour Master for the Port of Eden regarding the proposed development should occur to discuss the requirements for the Harbour Master approval as well as to deal with concerns relating to lighting of the development during construction and operation and impacts on shipping navigation.**
- **For reporting purposes, Section 4.4 of the Construction Environmental Management Plan shall be appropriately amended nominating the Harbour Master as the first point of contact in the event of any spills or leaks into the waterway.**
- **Section 9 of the Operational Environmental Management Plan shall be amended to include an additional management task to ensure all relevant authorities (including the Harbour Master) are immediately contacted in the event of any spills or leaks from vessels resident to or visiting the marina and/or from any marina infrastructure associated with the operation of the marina.**

12.9 Department of Primary Industries NSW Office of Water

The Department advised that it raised no objection to the proposed marina development and confirmed that the issue of a control activity approval under the provisions of the Water Management Act 2000 was not required in this instance.

12.10 Local Land Services

The Service has advised that the proposed marina development has been subject to a desktop assessment.

As the proposed development constitutes designated development, the Native Vegetation Act 2003 does not apply. However, from a preliminary observation the old cannery site is highly disturbed with some regrowth of native vegetation intermixed with exotic species. The surrounding headlands are well represented vegetation communities in the region.

12.11 NSW Police Marine Area Command

There has been no response from the Area Command to Council formal notification and subsequent written requests seeking advice.

13.0 INTERNAL COUNCIL REFERRALS

The application was also subject to an internal Council referral process in accordance with Council Policy. Appropriate responses have been received from relevant Council section.

13.1 Engineering Services

Council's Engineering considerations have been provided in Section 7 of Appendix 10 to this Report. Engineering Staff have raised no objection to the proposed marina development subject to specific conditions being imposed on any subsequent consent.

The recommended conditions are contained in Appendix 9.

13.2 Environmental Services

Environmental Services provided the following comment:

- No geotechnical report has been provided (as previously requested) to ensure the orientation of the wave attenuator is possible / achievable. Until such an assessment is completed the final orientation must be considered draft and associated projected impacts on wave action, especially on Cocora Beach are also not yet finalised.
- Council is particularly concerned about avoiding or minimising impacts on Cocora Beach. Environmental Services believes that 6-8m of rotation on Cocora Beach is potentially significant and options should be explored to reduce this impact. To this end the EIA by Royal Haskoning recommends cranking the arm of the attenuator to reduce wave action on Cocora Beach. However, the submitted plans do not have this articulation present (despite it being in the modelling report by Cardno). Given the importance of maintaining environmental and social amenity of Cocora Beach this 'cranked' option, if sufficiently modelled and found to improve (i.e. lessen) local environmental impacts on the beach must be the preferred design and in the submitted plans.
- The *Posidonia australis* bed identified to the east of the main marina site must be marked as an exclusion zone in any future construction of the marina.

- The Environmental Management Plan 2013 (Coriolis Marine) provides little direction in terms of each recommendation / management plans' responsibility, timing of implementation or the specific actions that would be undertaken. Further work on this Plan is required to clearly articulate the exact nature of each of the actions proposed and relevant authority which will require audited information.

The concerns raised by Environmental Services were subsequently referred to the proponent for consideration on the 20 February 2015.

A detailed response addressing the issues raised was received from the proponent on 10 April 2015.

Council's Environmental Services have reviewed the additional information and raise no objection to the proposed marina development subject to the following conditions being imposed on any subsequent development Consent:

- That the applicant fully implement the submitted Operation Environmental Management Plan (OEMP) (March 2015).
- The independent environmental audit proposed within the OEMP must be conducted by suitably qualified company/companies with appropriate professional qualifications and expertise in all areas of the Operation Environmental Management Plan (OEMP) (March 2015).
- Submit to Bega Valley Shire Council, for its approval, the independent environmental audit of the Cattle Bay Marina which will be conducted after 12 months and again after 3 years operation and thereafter at 5 yearly intervals.
- Comply with any actions required by Bega Valley Shire Council or other relevant authority, in relation to these authorities' review of the independent environmental audit of the OEMP.
- The independent environmental audit shall also include a review of the Operational Environmental Management Plan and provide recommendations for its update as required. These updates are to be reported within the independent environmental audit program as appropriate.
- A clearance certificate or similar, from Royal Haskoning DHV or Cardno for the final design of the wave attenuator is required. This certificate must clearly state whether the final design selected (including but not limited to materials, angles, dimensions, location etc.) is consistent with the modelled design in the report prepared by Cardno 'Cattle Bay Marina, Eden – Wave Modelling' (Cardno, 28 July 2014) and subsequent submission response correspondence from Royal Haskoning DHV (8th April 2015). The clearance certificate must be submitted and approved by Council prior to the issue of a construction certificate.
- Upon written request and within 14 business days, submit to the relevant authority, all issues / status / performances which are tracked and managed through the Operation Environmental Management Plan (March 2015). For

example but not limited to; logs, licenses, monitoring reports, registers, spillages, pollution incidents, training, insurances, environmental, noise, lighting and safety reports, incidents, checklists, complaints and agreements.

- The *Posidonia australis* bed identified to the east of the main marina site must be marked as an exclusion zone in any future construction of the marina.
- Comply with the requirements of the 'Blue Book' for soil and water management on site during the construction phase of roads, drainage and other relevant infrastructure.

Comment

The recommended conditions are recommended for inclusion in the draft consent (see Section 10.3 of this report).

13.3 Health and Building Services

Health and Building Services have recommended the following conditions for inclusion in any draft consent to ensure maritime safety and compliance with the Building Code of Australia and relevant Standards.

Comment

The recommended conditions have been reviewed and are considered reasonable and justified given the circumstances of the case. It is to be noted that recommended conditions a, b and c have been addressed in Section 10.11 of the Report.

- | |
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| <ul style="list-style-type: none">a. The OEMP shall be amended to the satisfaction of Council prior to the release of any construction certificate to make provision for emergency users of the marina in a range of berth sizes at all times.b. The OEMP shall be amended to the satisfaction of Council prior to the release of any construction certificate to allow for staying overnight on boats for casual and emergency users of the marina and their animals. Such casual and emergency stays shall not exceed 6 nights.c. The OEMP shall be amended to the satisfaction of Council prior to the release of any construction certificate to allow for emergency users of the marina to undertake repairs necessary to maintain or restore the sea worthiness of their vessel.d. Prior to the issue of any subsequent construction certificate by the Principal Certifying Authority , a preliminary site contamination report shall be provided to council for concurrence |
|--|

- e. Prior to the issue of any subsequent occupation certificate, a site contamination validation report is to be submitted to Council for concurrence. Any subsequent Construction Environmental Management Plan shall be amended accordingly to give effect to this condition.**
- f. The final construction plans shall demonstrate compliance for the access of people with disabilities and must be provided in accordance with the requirements of the Building Code of Australia, AS 1428.1, AS3962 and with regard to the Disability Discrimination Act 1992 - Access to Premises Standards 2010. These plans shall be submitted to Council for concurrence prior to the release of any construction certificate.**
- g. A revised design of the shore based amenities incorporating an additional unisex sanitary compartment with shower and an outside cold water shower are to be submitted to Council for concurrence prior to the release of any construction certificate.**
- h. A separate application to obtain approval to connect to council's sewerage system, undertake sanitary drainage and plumbing work under Section 68 of the Local Government Act 1993 shall be submitted to Council for approval prior to the issue of any construction certificate. A plumbing and drainage design plan is to be submitted with the application to Council.**
- i. A fire safety list of essential fire or other safety measures shall be submitted prior to the issue of the Construction Certificate. The fire safety list shall specify all measures (both current and proposed) that are required for the building so as to ensure the safety of persons in the building premises in the event of fire. The fire safety list must distinguish between the measures that are:-**
 - Currently implemented in the building premises; and**
 - To be proposed to be implemented in the building premises, and must specify the minimum standard of performance for each measure.**
- j. Toilet and shower facilities shall be made available to casual and emergency users at all times during their stay at the marina.**
- k. Sanitary facilities are to be made available to all visitors to the wharf during daylight hours.**
- l. All wharf, ramp and pontoon decks are to be finished with non-slip surface.**
- m. All pontoon arm gates shall be readily openable in the direction of egress without a key by way of a single downward acting handle.**
- n. All building work must be carried out in accordance with the provisions of the Building Code of Australia.**

- o. A final Occupation Certificate must be issued by the Principal Certifying Authority prior to occupation or use of the development. In issuing an occupation certificate, the Principal Certifying Authority must be satisfied that the requirements of Section 109H of the Environmental Planning and Assessment Act 1979 have been satisfied.**
- p. The owner of a building, to which an essential fire safety measure is applicable, shall provide Council with an annual fire safety statement for the building premises. The annual fire safety statement for a building premises must: -**
 - Deal with each essential fire safety measure in the building premises; and**
 - Be given:-**
 - Within 12 months after the last such statement was given; or**
 - If no such statement has previously been given, within 12 months after a final fire safety certificate was first issued for the building.**

As soon as practicable after the annual fire safety statement is issued, the owner of the building premises to which the statement relates:-

- Must also provide a copy of the statement (together with a copy of the current fire safety schedule) to the Commissioner of New South Wales Fire Brigades; and**
- Prominently display a copy of the statement (together with a copy of the current fire safety schedule) in the building.**

14.0 CONCLUSION

The submitted development application (2014.430) provides for the construction and operation of a marina development comprising shore based management and infrastructure facilities and water based berthing facilities and associated wave attenuator.

The proposed development constitutes designated development pursuant to the provisions of the Environmental Planning and Assessment Act 1979 and associated Environmental Planning and Assessment Regulations 2000.

The Director General Requirements for the development were issued on 21 March 2013.

Responding to the Director General's Requirements the proponent, as part of the current application, has submitted an Environmental Impact Statement supported by a number of specialist reports. During the assessment process, the proponent provided supplementary reports and documents to address issues stemming from the notification and referral process and matters arising from the assessment process generally.

The reporting undertaken in support of the current application has been extensive and has adequately addressed the scope of the development and quantified potential impacts.

In accordance with the provisions of the EP&A Act 1979 and the EP&A Regulations 2000, the development application has been subject to 2 separate notification periods. In response, a total of 25 submissions have been received and have been summarised in Section 11 of this report. It is considered that the grounds of objection raised in the submissions would not sustain a refusal of the application.

Based on the Section 79C assessment detailed in this report it is recommended that Development Application 2014.430 be approved subject to the conditions listed in the Draft Development Consent attached as Appendix 9 to this report.