

**JOINT REGIONAL PLANNING PANEL
HUNTER AND CENTRAL COAST**

JRPP No	2015HCC025
DA Number	16-2015-586-1
Local Government Area	Port Stephens
Proposed Development	Marina – Extension to existing marina (additional 59 berths) and car parking.
Street Address	<p>Marina</p> <p>Nos. 2C, 2E and 2F Ridgeway Avenue, Soldiers Point (Lot 539 DP 823769, Lot 1 and 2 DP 1058490).</p> <p>Car parking (reline existing on-site)</p> <p>No.2 Sunset Boulevard, Soldiers Point (Lot 197 DP 27084)</p> <p>Car parking (off-site valet parking)</p> <p>Units 2 & 3, No. 324 Soldiers Point Road, Salamander Bay (Lot 2 and 3, SP 59025)</p>
Applicant/Owner	<p>Marina: State of New South Wales – Crown Land.</p> <p>Lot 1 DP 1058490 – No.2E Ridgeway Avenue, Soldiers Point. Lot 2 DP 1058490 – No.2F Ridgeway Avenue, Soldiers Point. Lot 539 DP 823769 – No.2C Ridgeway Avenue, Soldiers Point. Unidentified land/waterway subject to lease extension</p> <p>Car parking (reline existing on-site): Clippers Anchorage Pty Ltd.</p> <p>Lot 197 DP 27084 – No.2 Sunset Boulevard, Soldiers Point.</p> <p>Car parking (off-site valet parking): Ragusa Pty Ltd (as Trustee for the d’Albora Superannuation Fund).</p> <p>Lot 0 SP 59025 – Unit 2 & 3, No.324 Soldiers Point Road, Salamander Bay.</p> <p>NOTE: Strata Corporation consent has not been provided.</p>
Number of Submissions	214 made by 174 people (includes pro-forma submission).
Regional Development Criteria (Schedule 4A of the Act)	Clause 8(b) particular designated development – marinas or other related land and water shoreline facilities, which meets the requirements for designated development under clause 23 of Schedule 3 to the <i>Environmental Planning and Assessment Regulation 2000</i> .

<p>List of All Relevant s79C(1)(a) Matters</p>	<p>Environmental planning instruments: s79C(1)(a)(i)</p> <ul style="list-style-type: none"> • State Environmental Planning Policy No.55 (Remediation of Land). • State Environmental Planning Policy No. 62 (Sustainable Aquaculture). • State Environmental Planning Policy No. 71 (Coastal Protection). • State Environmental Planning Policy (State and Regional Development) 2011. • Port Stephens Local Environmental Plan 2013 (LEP2013). <p>Instrument subject to public consultation and notified to the consent authority: s79C(1)(a)(ii)</p> <ul style="list-style-type: none"> • N/A. <p>Development control plan: s79C(1)(a)(iii)</p> <ul style="list-style-type: none"> • Port Stephens Development Control Plan 2014 (DCP2014). <p>Planning agreement or draft agreement under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F: s79C(1)(a)(iv)</p> <ul style="list-style-type: none"> • N/A. <p>Coastal zone management plan: s79C(1)(a)(v)</p> <ul style="list-style-type: none"> • Government Coastal Policy <p>Relevant regulations: s79C(1)(a)(iv)</p> <ul style="list-style-type: none"> • Division 5 of Part 9 of the <i>Environmental Planning and Assessment Regulation 2000</i>
<p>List all documents submitted with this report for the panel's consideration</p>	<p>DA documentation and Plans Environmental Impact Statement prepared by Hamptons Property Service (and all relevant appendices).</p> <p>External agency advice Department of Primary Industries (Fisheries) Department of Primary Industries (Great Lakes Marine Park) Department of Primary Industries (Water) NSW Environmental Protection Authority (EPA) Office of Environment and Heritage – Species Impact Statement and Aboriginal Culture and Heritage. Roads and Maritime Services (RMS)</p>
<p>Recommendation</p>	<p>Refusal subject to the following reasons:</p> <ol style="list-style-type: none"> 1. Insufficient and inadequate information has been provided in order to facilitate a thorough assessment of the development including the following:

	<ul style="list-style-type: none"> - Aboriginal Cultural Heritage Assessment - Species Impact Statement - Coastal and Hydrological Assessment - Visual Impact Assessment <p>2. The development is inconsistent with the aims of State Environmental Planning Policy No.71 (Coastal Protection) as it has the potential to significantly impact upon Critically Endangered Species (Beach Stone Curlew), impact the visual amenity of the Soldiers Point Foreshore and has an unknown impact upon Aboriginal Culture and Heritage in the locality (s.79C(a)(i) <i>EP&A Act 1979</i>).</p> <p>3. The development is inconsistent with the aims and objectives of the W2 Recreational Waterways zone, as it has the potential to adversely impact upon the natural environment and coastal processes (s.79C(1)(a)(i) <i>EP&A Act 1979</i>).</p> <p>4. The development fails to conform to the controls contained within Port Stephens Development Control Plan (B2 Natural Resources, B3 Environmental Management and B9 Road Network and Parking) (s.79C(1)(a)(iii) <i>EP&A Act 1979</i>).</p> <p>5. The development has the potential to result in an impact to the environment, in particular the critically endangered Beach Stone Curlew (s.79C(1)(b) <i>EP&A Act 1979</i>).</p> <p>6. The development has the potential to adversely impact the environment, ecology, Aboriginal Culture and Heritage and visual amenity and therefore the site is not suitable for the development (s.79C(1)(c) <i>EP&A Act 1979</i>).</p> <p>7. The development is inappropriate for the site given existing site constraints (including car parking, ecology and Aboriginal Culture and Heritage) and the character of the locality and is therefore not in the public interest (s.79C(1)(e) <i>EP&A Act 1979</i>).</p>
Report by	Amy Stone Senior Executive Planner Port Stephens Council
Report Reviewed by	Cindy Dickson – Planning & Developer Relations Coordinator Matthew Brown – Development Assessment & Compliance Section Manager Mike McIntosh – Development Services Group Manager
Report date	5 February 2016

ASSESSMENT REPORT AND RECOMMENDATION

EXECUTIVE SUMMARY

Development consent is sought for a 59 berth extension to the Soldiers Point Marina, at Nos.2C, 2E, 2F Ridgeway Avenue and unidentified land/waterway subject to lease extension, Soldiers Point. The extension will result in a total of 142 berths at the site accommodating vessels ranging in size from 10 metres to 20 metres. The proposal also includes the change of use of Units 2 & 3, No.324 Soldiers Point Road, Salamander Bay, for valet car parking and the formalisation of the sites existing parking at No.2 Sunset Boulevard, Soldiers Point.

The Soldiers Point Marina is located at the north-western end of the Soldiers Point peninsular between Everitt Park and Sunset Beach. The Marina currently comprises 90 berths which operate 24 hours daily, dual slipway, hardstand, administration office, restaurant, café, boat sales offices, workshop, laundry, sauna, massage rooms and amenities. Surrounding land uses include Soldiers Point Holiday Park and residential development. No.2 Sunset Boulevard and Spencer Park are within close proximity to the Marina site. The Marina site is zoned W2 Recreational Waterways and part B1 Neighbourhood Centre. The extension is located on land zoned W2 Recreation and Marinas are a permissible land use in this zone.

Units 2 & 3, No.324 Soldiers Point Road, Salamander Bay, are located within an existing industrial precinct 3.8 kilometres from Soldiers Point Marina. The site is not within proximity to residential properties and is zoned B5 Business Development. Car parks are permitted with consent within the B5 zone.

The application was lodged with Council on 15 September 2015. Prior to the lodgement of the application Council staff invited the applicant to attend pre-lodgement meetings in order to assist the applicant and to ensure that all relevant information was submitted for assessment. However, the applicant elected not to attend a formal pre-lodgement meeting. The application was prepared for lodgement without any discussion with Council staff.

The application was publicly exhibited for a period of 30 days from 24 September 2015 to 24 October 2015. However, Council provided an extension of time to 7 November 2015 upon request. A total of 214 submissions, made by 174 people, were received in response to the notification of the development. To fully gauge community views, Council embarked on an extensive community consultation program including broad written notification to the residents of the Soldiers Point Peninsula, creation of a FAQ sheet, a one on one information session, two drop-in information sessions and a briefing at a board meeting of the Worimi Local Aboriginal Land Council (WLALC). The key issues raised in the submissions included navigation and boat safety, environmental impacts, Aboriginal cultural heritage, inadequate DA documentation, pollution, adverse impact to the oyster industry, use of public land for private benefit, access and facilities for the disabled, lack of car parking and traffic impacts. The issues raised are addressed in the body of this report. It is considered that the issues are sufficient to warrant refusal of the application based upon the information provided.

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

Correspondence was sent to the applicant on 24 November 2015 advising that a number of significant deficiencies had been identified with the application during the assessment process. The inadequacy of the Species Impact Statement, failure to provide an Aboriginal Cultural Heritage Assessment (s.80D National Parks and Wildlife Regulations 2009 (NPW Regs)), accuracy of coastal processes and hydrological assessment, width and safety of the navigation channel and insufficient car parking were all noted as issues of fundamental concern.

Subsequently to Council's correspondence to the applicant, RMS provided conditions of consent (dated 3 February 2016) and raised no objection subject to the width of channel being maintained at 40 metres between the boundary of the oyster lease adjacent to Dowadee Island and the footprint of the marina. RMS confirmed that the tidal flow of 1.6 knots utilised within the applicants studies had been confirmed by a study commissioned by RMS. A designated 4 knot speed zone is established in the area and RMS considers that this enhances navigation safety.

It is noted that a similar application (16-2012-57-1/2012HCC010) was refused by the JRPP on 12 June 2014 and these outstanding issues formed the basis of the reasons for refusal for that application. The applicant was provided with the opportunity to withdraw the application. The applicant requested that the application be reported to the JRPP based upon the information provided to date, the application is being reported on this basis. The development has been assessed under s.79C of the EP&A Act and is unsatisfactory. Accordingly, it is recommended that the application be refused.

OFFICER'S RECOMMENDATION

THAT development application (DA) 16-2015-586-1 for an Extension to an existing marina (additional 59 berths) and car parking, at Nos. 2C, 2E and 2F Ridgeway Avenue, Soldiers Point (Lot 539 DP 823769, Lot 1 and 2 DP 1058490), Unidentified land/waterway subject to lease extension at Soldiers Point, No. 2 Sunset Boulevard, Soldiers Point (Lot 197 DP 27084) and Unit 2 & 3, No. 324 Soldiers Point Road, Salamander Bay (Lot 0 SP 59025), be refused for the reasons set out in Section 7 of this report.

1. INTRODUCTION

This report provides a detailed overview of the development proposal involving construction of a 59 berth extension to the Soldiers Point Marina and associated car parking (reline existing on-site and provision of off-site valet parking) and provides a comprehensive planning assessment of the development against the major heads of consideration under s.79C *EP&A Act*. The DA is reported to the Hunter and Central Coast Joint Regional Planning Panel in accordance with 23G and Schedule 4A *EP&A Act*, as the development is a type classified under s.8(b) 'particular designated development', being a marina, which meets the requirements for designated development under s.23 of sch.3 to the *Environmental Planning and Assessment Regulation 2000 (EP&A Regs)*.

2. BACKGROUND

The application was lodged with Council on 15 September 2015. A 30 day public exhibition period commenced from 24 September 2015 to 24 October 2015. Council provided an extension of time to 7 November 2015 upon request. A total of 214 submissions, made by 174 people, were received in response to the notification of the development. To fully gauge community views, Council embarked on an extensive community consultation program including broad written notification to the residents of the Soldiers Point Peninsula, creation of a FAQ sheet, a one on one information session, two drop-in information sessions and a briefing at a board meeting of the Worimi Local Aboriginal Land Council (WLALC).

On 24 November 2015 correspondence was sent to the applicant advising that a number of significant deficiencies had been identified with the application during the assessment process. The inadequacy of the Species Impact Statement, failure to provide an Aboriginal Cultural Heritage Assessment (s.80D *NPW Regs*), accuracy of coastal processes and hydrological assessment, width and safety of the navigation channel and insufficient car parking were all noted as issues of fundamental concern. The applicant was provided with the opportunity to withdraw the application. The applicant requested that the application be reported to the JRPP based upon the information provided to date. As a result the application was not re-exhibited following the initial public exhibition process.

Subsequently to Council's correspondence to the applicant, RMS provided conditions of consent, dated 3 February 2016, and raised no objection subject to the width of channel being maintained at 40 metres between the boundary of the oyster lease adjacent to Dowadee Island and the footprint of the marina. RMS confirmed that the tidal flow of 1.6 knots utilised within the applicants studies had been confirmed by a study commissioned by RMS. A designated 4 knot speed zone is established in the area and RMS considers that this enhances navigation safety.

It is noted that a similar application (16-2012-57-1/2012HCC010), which sought approval for the expansion of the marina to accommodate an additional 58 berths along with associated car parking was refused by the JRPP on 12 June 2014. This application proposed to address car parking deficiencies through the provision of car parking at 'Spencer Park' which is Council owned land. Owners consent was not provided and the car parking solution could not be supported as it relied upon land

that was classified as 'community'. The current application does not include the proposed Spencer Park car parking solution.

Council staff have determined that the current application (16-2015-586-1/2015HCC025) is essentially the same as the previous application (16-2012-57-1/2012HCC010) and that the applicant has failed to address the reasons for refusal issued by the JRPP including the provision of insufficient information primarily the failure to submit an Aboriginal Cultural Heritage Assessment and the inadequacy of the submitted Species Impact Statement and Hydrological Assessment, non-compliance with *State Environmental Planning Policy No.71 (Coastal Protection)* (SEPP No.71), inconsistency with W2 Recreational Waterways Zone under *Port Stephens Local Environmental Plan 2013* (LEP2013), potential adverse impact to Aboriginal Culture and Heritage and visual amenity and site suitability.\

3. SITE DESCRIPTION

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

Soldiers Point Marina is located at the north-western end of the peninsular between Everitt Park and Sunset Beach. Dowadee Island is located directly opposite the Marina. An oyster lease is located to the north of the Marina in proximity to Dowadee Island. The Marina is positioned within the Port Stephens estuary within the Karuah River and Great Lakes Catchment area. The site is approximately 7.5 kilometres north-west of the Nelson Bay Town Centre. The Marina currently comprises 90 berths, a dual slip way, concrete hardstand area and a marina building, and the following associated uses: administration offices, restaurant, café, two boat sales offices, workshop, laundry, sauna/massage rooms and amenities. Existing berths are also being utilised for wedding functions and a floating café.

The existing marina site encompasses 16,360m² of land and waterways and is irregular in shape. The Marina site is zoned W2 Recreational Waterways and part B1 Neighbourhood Centre. The extension is located on land zoned W2 Recreation and Marinas are a permissible land use in this zone. Following construction of the extension the marina would have an area of 25,979m². The proposed 9,619m² extension representing a 37% increase in the size of the existing facility.

The existing 90 berth Marina was approved under development application 7-1981-625-1. Prior to this time the marina comprised of a small number of swing moorings. The initial application sought approval for 130 berths, however the approval was granted for stages 1 and 2 of the development, being 90 berths until such time that adequate car parking could be provided to facilitate the total development of 130 berths. A number of applications comprising alterations/additions and redesign of marina berths, as well as modification of the marina building have been approved subsequent to the granting of the original approval, although the total number of approved berths remained at 90. The marina operates 24 hours a day, seven days a week in order to enable marina berth holders access to their vessels. An access control gate is located within the existing building associated with the Marina.

The Marina's associated car park comprises 21 parking spaces and is located at No.2 Sunset Boulevard. A boom gate currently exists to restrict access to the site and spaces are designated to specific marina clients through name plates. The site is regular in shape and 760m² in area and is zoned R2 Low Density Residential. Car parking is prohibited in the R2 zone, however the subject site maintains existing use rights. The original marina approval (7-1981-625-1) required the provision of 45 car parking spaces and application 7-1982-1663-1 facilitated construction of 20 of the required spaces at No.2 Sunset Boulevard. The site had previously been rezoned to a 'Special Business Zone' (under IDO 23) to facilitate the development.

Subsequently, application E827/1994 was approved resulting in the reconfiguration of parking at No.2 Sunset Boulevard to facilitate 24 spaces. The remaining 21 required car parks were partially provided within land located at 2A Ridgeway Avenue, 9 Mitchell Street and the road reserve of Sunset Boulevard and Ridgeway Avenue. However, a historic shortfall of 17 car parking spaces is acknowledged by the applicant due to the construction of the 90 berth marina without the adequate provision of the required car parking spaces.

The off-site valet parking service is proposed at Units 2 & 3 No. 324 Soldiers Point Road, Salamander Bay, which is located approximately 3.8 kilometres from Soldiers Point Marina. The valet parking site is located within an industrial precinct and is not within proximity to residential properties. The site is accessed by a battle-axe handle 12.5 metres wide, is irregular in shape and comprises a total area of 4670m². The combined area of Units 1 & 2 comprises 664m² inclusive of external car parking spaces. The site is zoned B5 Business Development and car parks are permitted with consent within the B5 zone. The site is currently utilised for boat storage associated with the Marina.



Fig. 1 – Locality plan: Soldier Point Marina and No.2 Sunset Boulevard



Fig. 2 – Locality plan: Unit 2 & 3 No.324 Soldiers Point Road

4. PROPOSAL

The development comprises the extension of the existing marina, formalisation of the sites car parking and use of existing industrial building for valet car parking, as illustrated in the development plans held at Annexure 1.

The extension of the marina protrudes into the waterway located to the west of the existing berths and has a total area of 9,619m². The extension results in a total of 142 berths located at the site, with the extension comprising an additional 59 berths. The following extensions will occur to each arm:

- Arm A will be extended by 51 meters in order to accommodate seven berths catering for 15 metre vessels to its southern side and nine berths to cater for ten metre vessels to its northern side;
- Arm B is proposed to be extended by 65 meters to accommodate an additional eleven berths catering for twelve metre vessels along its southern side and six single multihull berths for 15 metre vessels to its northern side.
- Arm C shall be extended 77 metres to accommodate an additional 13 berths for 12 meter vessels to its southern side, and ten berths catering for 20 metre vessels to the north.
- Further, the three T-heads of each arm will provide berthing for vessels up to 20 metres, resulting in an additional 3 berths.

In order to facilitate the development seven existing swing moorings leased by the marina are to be relinquished and relocated by Roads and Maritime Services (RMS). Four of the moorings are located in the northern basin and three within the southern basin. As the extension protrudes within the waterway and results in a reduced navigation channel, a number of existing public swing moorings will also be required to be relocated. The relocation of these moorings shall also be undertaken at the discretion of RMS.

As a result of the extension the existing navigation channel is reduced to 50 metres from the western edge of the marina infrastructure to Dowadee Island. The actual width of the navigation channel shall be 40 metres between Dowadee Island and the marina footprint due to the berthing of vessels on the T-heads of each arm.

The applicant also seeks approval for the new line-marking of the existing car park at No.2 Sunset Boulevard in order to provide 23 spaces on site and retention of the existing seven spaces on Council land at 2A Ridgeway Avenue which is located directly adjacent the marina building. This land is currently subject to reclassification and rezoning following which a formal lease agreement will be entered into between the owner/operator of the marina and Council to formalise the historic arrangement. It is noted that two of the on-site car parking spaces will be reserved for use by the valet parking operation. Further, the submitted plans indicate there are five 90 degree parking spaces located within the road reserve adjacent No.2 Sunset Boulevard. The plan is not a true representation of the site conditions as the parking in this location has not been formalised.

In addition to the car parking on-site the applicant proposes the use of Units 2 & 3 No.324 Soldiers Point Road, Salamander Bay to provide 33 secured off-site valet car parking spaces.

5. PLANNING ASSESSMENT

5.1. THREATENED SPECIES CONSERVATION ACT 1995 (TSC Act)

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

Section 110 of the *TSC Act* requires developments likely to affect threatened species, populations or ecological communities that a species impact statement (SIS) must be completed. Further, in accordance with s.5A of the *EP&A Act* and s.94 of the *TSC Act*, the development application having the potential to affect threatened species, populations or ecological communities requires concurrence of the Director General (DG) of the Office of the Environment and Heritage (OEH).

Council has identified that the development is likely to adversely impact upon threatened flora and fauna, in particular the Beach Stone-Curlew (*Esacus magnirostris*). The breeding pair of the Beach Stone-Curlew which have been identified in proximity to the subject are considered the southern-most breeding pair in Australia. Dowadee Island is considered a breeding site and a high roost site for the species. There are approximately 13 birds in the NSW and as such the Beach Stone-curlew in NSW constitutes a single population. Therefore, the breeding pair is essential for the long-term viability of the species. Any potential impact to the breeding pair is unacceptable.

In addition, the development has the potential to impact upon the following threatened species and/or their habitat:

- Pied and Sooty Oystercatches: These birds have breeding habitat on Dowadee Island. The development may result in adverse impacts potential breeding habitat and high-tide roosts through erosion and wave wash/wake.
- Marine Turtles: Loggerhead Turtle have been recorded within proximity of the development site. Increased boating traffic may lead to an increased risk of boat strike to these species.
- *Posidonia australis* (seagrass meadows of the Manning-Hawkesbury ecoregion ecological community): The presence of this community is identified within Soldiers Point and Dowadee Island. Construction of the extended marina may result in disturbance to this species.

The SIS submitted with the application provides insufficient information and assessment of threatened species matters such that the SIS does not adequately address the Director General Requirements (DGRs) issued by OEH. In addition, the SIS fails to address all threatened species and their habitat at the development site and does not take into account appropriate consideration of known records of species or likely impacts. The information provided in the SIS does not reflect the available information and often uses anecdotal comments and/or personal observations made by marina staff /management. This information is not considered to be reliable source as the records cannot be verified.

Further, the SIS fails to provide a significance assessment in accordance with the Significant Impact Guidelines 1.1 - Matters of National Environmental Significance for all *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*, discussion of potential impacts to the SEPP 14 wetland on Dowadee Island, consideration of potential impacts from construction and operation noise on sensitive fauna receivers on Dowadee Island, or the assessment of the potential impacts to surrounding shorelines from changes to volume of marine traffic and the use of the proposed navigational channel.

The SIS has been assessed by Council and OEH and it has been determined that the SIS submitted with the application provides insufficient information and assessment of threatened species matters. In particular the SIS does not provide sufficient evidence that the Beach Stone-Curlew breeding pair will not be significantly impacted by the development. The SIS does not adequately address DGRs issued by the OEH and as such OEH have not issued concurrence.

5.2. MARINE ESTATE MANAGEMENT ACT 2014 (MEM Act)

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

The development is subject to the *Marine Estate Management Act 2014* as the site is located within the Port Stephens – Great Lakes Marine Park. The site is located within the special purpose zone, which is zoned for vessel related facilities including marinas and associated facilities. The proposal is not inconsistent with the zone.

In accordance with s.55 of the *MEM Act* concurrence is required from Department of Primary Industries Port Stephens – Great Lakes Marine Park (DPIMP). DPIMP have provided concurrence and raise no objection to the development.

5.3. ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (EPA Act)

Section 77A - Designated Development

Section 77A of the *EP&A Act* provides that development is designated development if it is declared to be designated development under an Environmental Planning Instrument (EPI) or the *EP&A Regs*. Schedule 3 of the *EP&A Regs* includes certain categories of marinas as being designated development. Alterations and additions are not designated development if, in the opinion of the consent authority, they do not significantly increase the environmental impacts of the total development.

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

sch.3 *EP&A Regs*) The DA has been submitted on the basis that the development is designated development and it is being processed accordingly.

Section 91 – What is 'integrated development'

Section 91 *EP&A Act* provides that development is integrated development if in order to be carried out, the development requires development consent and one or more other approvals. The proposed development is integrated as it requires approval under the following Acts:

- *Section 90 National Parks and Wildlife Act*: for the grant of Aboriginal impact permit. The Soldiers Point area is a highly significant landscape to the Worimi people. The area is presently undergoing nomination for gazettal as an Aboriginal Place as a result of its cultural and archaeological significance. An Aboriginal Cultural Heritage Assessment has not been submitted with the application as required by s.80D *NPW Regs*. OEH have advised that the proposed development has potential to be detrimental to both the cultural and archaeological significance of the locality. General Terms of Approval (GTAs) with respect to Aboriginal Cultural Heritage cannot be issued by OEH until a satisfactory Aboriginal Cultural Heritage Assessment has been undertaken.
- *Section 43(a), 43(b), 47, 48 and 55 Protection of the Environment Operations Act 1997 (POEO Act)*: marinas which can accommodate 80 or more vessels are defined as scheduled activities under the POEO Act. Further, the proposed construction works are classified as scheduled activity work. Environmental licenses are required to be obtained from the Environmental Protection Authority (EPA). The EPA issued GTAs dated 21 December 2015.
- *Section 205 Fisheries Management Act 1994 (FMA Act)*: a permit is required to harm marine vegetation in a protected area. The Department of Primary Industries (DPI) Fisheries has raised no object to the proposed development (dated 9 October 2015).
- *Section 91 Water Management Act 2000 (WM Act)*: the proposed works occur on waterfront land. However, Department of Primary Industries - Office of Water (DPI Water) have determined that the works are relatively minor and not likely to exceed minimal harm. A controlled activity approval is not necessary in this instance.

Section 107 and 108 - Existing use rights

No. 2 Sunset Boulevard contains an existing car parking facility comprising 21 spaces, which was approved under 7-1981-625-1. The site is currently zoned R2 Low Density Residential, however was rezoned 'Special Business Zone' (under IDO 23) at the time of the approval in order to facilitate the required car parking. Car parking is prohibited within the R2 Low Density Residential zone. The applicant proposed to reline mark the current facility. The car parking located at No.2 Sunset Boulevard is an 'existing use' under section 106(b) *EP&A Act*.

Section 107(1) *EP&A Act* allows for the continuance of existing use and s.108(1) *EP&A Act* allows the regulations to make provision for alterations and additions, and enlargement or expansion or intensification of an existing use.

Clause 44(1) *EP&A Regs* provides that development consent is required for rebuilding of building or works. The works; (a) must be for the existing use of the building or work and for no other use, and (b) must be carried out only on the land on which the building or work was erected or carried out immediately before the relevant date.

The applicant proposed to reline the existing car park in order to cater for the provision of 21 car parking spaces. The works shall facilitate the continued use of the site for a car park and will be carried out on the land subject to the original approval. The proposed works to No. 2 Sunset Boulevard are satisfactory when considered against s.107 and 108 *EP&A Act*.

5.4. EP&A ACT SECTION 79C – MATTERS FOR CONSIDERATION

The proposal has been assessed under the relevant matters for consideration detailed in s.79C (1) *EP&A Act* as follows:

5.4.1. Section 79C(1)(a)(i) provisions of any environmental planning instrument

State Environmental Planning Policies

State Environmental Planning Policy (State and Regional Development) 2011

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

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

Clause 7(1) (b) and (c) of SEPP No.55 require that where land is contaminated, Council must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed. If the land requires remediation Council must be satisfied that the land will be remediated before the land is used for that purpose.

In 2012 the EPA advised that the site has been reported under the *Contaminated Lands Management Act* for contamination on top soil (likely)/ground water (confirmed), however, in November 2015 the EPA confirmed that the 2012 advice had been issued in error. The contaminated land notification (under the *Contaminated Land Management Act 1997*) applied to the Cove Marina Site and not the subject site. The EPA has provided General Terms of Approval (GTAs) dated 21 December 2015.

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

SEPP No.62 aims to encourage sustainable aquaculture, including sustainable oyster aquaculture. Given the proximity of the proposed development to existing oyster leases, Part 3A Consideration of effects of proposed development on oyster aquaculture must be considered.

Clause 15B SEPP No.62 requires that, prior to determination of a development application a consent authority must consider if the development will have any adverse effects on oyster aquaculture development. Further, if the development will effect will have an effect, notice shall be given to the Director General of the Department of Primary Industries (DPI) Fisheries (Fisheries). In this regard, DPI Fisheries have raised no objection to the development, however, the advice received (dated 9 October 2015) noted that the applicant should undertake further consultation with local oyster lease operators. A number of submissions were received during the public exhibition period from owner/operators of existing oyster leases located within proximity to the marina extension. These submissions identified that further consultation had not been undertaken by the applicant and raised concerns that the extension may result in adverse impacts to the production of oysters due to potential impacts to tidal flows and water quality.

The Coastal Processes and Navigation Assessment prepared by Royal Haskoning DHV (2015) does not adequately address the hydrological impacts of the proposal (further detailed at SEPP N.71 discussion below). As such, Council is not satisfied that the proposed development will not result in changes to the existing tidal flows. The impact of changes to tidal flows upon the existing oyster leases remains unknown and as such the proposed development does not satisfy the provisions of SEPP No.62.

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

The subject site is located within the coastal zone, therefore the provisions of SEPP No. 71 Coastal Protection apply to the subject development. SEPP No.71 seeks to ensure that development in the NSW Coastal Zone is appropriate and suitably located and its aims include to: a) protect the natural attributes of the coast, b) protect and preserve Aboriginal cultural heritage, c) protect the visual amenity of the coast, d) protect beach environments and amenity, and e) ensure the type/bulk/scale/ and size of development is appropriate for the location.

The proposed development is inconsistent with the aims of SEPP No.71. The proposal has the potential to significantly, impact Endangered Species and the visual amenity of the Soldiers Point Foreshore. The impacts of the proposal upon Aboriginal Cultural Heritage are unknown as insufficient information has been provided. Further, the development proposed is considered to be inconsistent with the matters outlined within Clause 8, as outlined below:

(a) the aims of this Policy set out in clause 2:

The proposed development is inconsistent with the aims of the SEPP.

(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,

The proposed development does not result in alterations to the existing foreshore access.

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

The application does not proposed additional public access.

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

The development that has been proposed is not suitable and is considered to be an overdevelopment.

(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:

The development will not result in significant overshadowing or view loss.

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

A visual impact assessment is provided within the EIS at section 4.2. The visual impact assessment comprises seven photomontages of select viewing sites. The EIS suggests that the impact of the proposed development is minimal and will not compromise the overall visual aspect of the waterway. It is noted that the visual impact assessment has not been undertaken in accordance with the Land and Environment Court policies for photomontages. Survey data has not been used to prepare the photomontages and details of the camera type and field has not been specified.

Council staff undertook a visual impact assessment of the proposal in relation to DA 16-2012-57-1. As the proposal has not fundamentally altered the outcomes of the visual impact undertaken by Council remain relevant. The following approach was adopted with the aim to systematically evaluate the visual environment pertaining to the subject site and using value judgements based on human responses to scenery:

- Objective assessment of the relative aesthetic value of the landscape, defined as visual quality and expressed as high, medium or low. This assessment generally relates to variety, uniqueness, prominence and naturalness of the landform, vegetation and water forms within each landscape character type.
- Determination of the landscapes ability to absorb different types of development

on the basis of physical and environmental character.

- An assessment of viewer sensitivity to change. This includes how different groups of individuals view the landscape.
- The undertaking of a viewpoint analysis to identify areas likely to be affected by development of the site and a photographic survey using a digital camera and a handheld GPS unit to record position and altitude.
- An assessment of the potential visual impacts on the landscape setting and character.

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

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

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

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

(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,

Refer to discussion at Section 5.1. The SIS submitted with the application is inadequate. Both Council staff and OEH are concerned that the proposed development will result in significant adverse impact to threatened flora and fauna, including the Beach Stone Curlew.

(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

DPI Fisheries have provided comments under the integrated approval process and raise no objection to the proposed development with regard to impacts to fish, marine vegetation and their habitats.

(i) existing wildlife corridors and the impact of development on these corridors:

The development does not impact upon identified wildlife corridors.

(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards:

The Coastal Processes and Navigation Assessment prepared by Royal Haskoning DHV (2015) does not adequately address the hydrological impacts of the proposal. The assessment notes that there shall be no significant impacts resulting from the proposal upon the environment in relation to coastal processes, however, historical data demonstrates that the existing Marina facility has resulted in changes to the surrounding shorelines. Council is not satisfied that the impacts to the surrounding environment, particularly Dowadee Island will not be impacted by expansion of the Marina.

The assessment notes that dredging is not required to achieve the water depths for access and berthing at the extended Marina, however, the assessment does not address the potential future need for dredging to maintain adequate depths to service the navigational channel, noting that as a result of the expansion the navigation channel now traverses shallow water within proximity to Dowadee Island. The assessment specifies that excavation and dredging is not required within the navigation channel however it is still anticipated that Yacht access along the navigation channel would be limited at low tide. Council officers are not satisfied that dredging works shall be required in the future. The assessment should address the worst case scenario and detail if mitigation measures are available to offset any potential environmental harm.

The assessment does not adequately consider operational marine traffic impacts. There is no discussion or numbers provided on the existing marine traffic and potential increases of this traffic once the marina expansion is operational. It is noted that there will a net increase of 52 vessels stored at the marina but limited discussion on how this increase will affect peak numbers of vessels using the proposed navigational channel, variation during seasons (particularly spring and summer), what impact a shallower and decreased channel width will have on the channel and surrounding areas and whether water quality impacts such as higher turbidity during low tides will impact on surrounding areas.

Further, the assessment has been undertaken based upon Hydrographic survey data dated February 2008 and Aus. Chart data dated 2001. It is noted that there was no significant change to seabed levels during the period of 2001 to 2008,

however, given the period of time that has elapsed since the 2008 data was prepared it is not satisfactory to rely on the 2008 data. Further, a Hydrographic Survey dated April 2012 is included at Appendix D but is not referenced within the body of the assessment. Therefore, it is not clear whether changes to the seabed have occurred from 2008 to 2012. The proposal has potential to result in significant environmental impacts and any hydrological assessment supporting the proposal should be based upon current survey data.

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

The majority of the submissions received during the public exhibition process identified safety concerns and impacts to recreational water users arising due to the reduction in width of the navigation channel and location of the channel within shallow waters. Council staff have raised concern that the development has been appropriately designed in order to minimise conflict between land-based and water-based coastal activities based on the information received during the public exhibition process.

However, subsequently to Council's correspondence to the applicant, RMS provided conditions of consent and raised no objection subject to the width of channel being maintained at 40 metres between the boundary of the oyster lease adjacent to Dowadee Island and the footprint of the marina. RMS confirmed that the tidal flow of 1.6 knots utilised within the applicants studies had been confirmed by a study commissioned by RMS. A designated 4 knot speed zone is established in the area and RMS considers that this enhances navigation safety.

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

The Soldiers Point area is a highly significant landscape to the Worimi people. The area is presently undergoing nomination for gazettal as an Aboriginal Place as a result of its cultural and archaeological significance. Further, the Worimi people own the adjoining Dowadee Island in freehold and maintain an undetermined land claim (ACC: 6686) over the waterways subject to the proposed extension. Council staff notified the Worimi Local Aboriginal Land Council (WLALC) of the proposed development in writing and also attended a board meeting of the WLALC in order to discuss the proposed development. Council staff also attended an on-site meeting with representatives of WLALC, the applicant and OEH as part of the assessment process.

With regards to the Aboriginal Land Claim it is noted that Council contacted the Department of Primary Industries – Lands and it was confirmed that the Land Claim did not impact upon the consent granted by Lands for the lodgement of the application.

Two written submissions were received from the WLALC objecting to the proposed development. Submissions were also received from individual members of the WLALC. The submissions identified that the proposed development will result in adverse impacts to Aboriginal Culture and Heritage and raised concerns that the

applicant has failed to undertake an Aboriginal Cultural Heritage Assessment as required by s.80D *NPW Regs*. The submissions raised a strong objection to the proposal noting the unique cultural and social (material and spiritual) connection of the Worimi people to both the land and waterways of Soldiers Point. As freehold owners of Dowadee Island the WLALC identified their significant concern that the marina extension would adversely impact this land and result in adverse impacts to native wildlife as a result of foreshore erosion.

Further, OEH have advised that the proposed development has potential to be detrimental to both the cultural and archaeological significance of the locality. General Terms of Approval (GTAs) with respect to Aboriginal Cultural Heritage cannot be issued by OEH until a satisfactory Aboriginal Cultural Heritage Assessment has been undertaken. As such, Council is not satisfied that the applicant has implemented sufficient measures to protect the cultural places, values, customs, beliefs and traditional knowledge of the Worimi Aboriginal people.

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

The EPA have provided GTA's. Subject to compliance with the conditions imposed by the EPA the development would be unlikely to result in adverse impacts to water quality.

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

The applicant has not provided sufficient information to demonstrate the proposal will not impact upon Aboriginal Cultural Heritage.

(o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,

N/A

(p) only in cases in which a development application in relation to proposed development is determined:

*(i) the cumulative impacts of the proposed development on the environment, and
(ii) measures to ensure that water and energy usage by the proposed development is efficient.*

The NSW Department of Urban Affairs and Planning, EIS Guidelines for Marina's and Related Facilities, stipulate that the cumulative impact of Marina facilities should give consideration to the existing or past marina operations, cumulative impacts upon coastal morphology/water quality, impacts to vegetation or fauna habitat and loss of access to public land and waterways. The advantages and disadvantages of clustering marina operations should also be assessed. The applicant has not adequately addressed the cumulative impacts of the proposed Marina extension including consideration of impacts to flora and fauna, hydrological and coastal process and Aboriginal Culture and Heritage. Based upon the information provided to date the Council is not satisfied that the cumulative impacts

of the proposal are acceptable.

Sufficient detail has not been provided upon energy and water efficiency. It cannot be satisfied that the proposal is satisfactory.

Regional Environmental Plan

There are no regional environmental plans that are relevant to this proposal.

Port Stephens Local Environmental Plan 2013 (LEP2013)

Clause 1.3 – Land to which Plan applies

Port Stephens *Local Environmental Plan 2013* (LEP2013) applies to land identified upon the 'Land Application Map'. The subject development occurs upon land located within the land application. LEP2013 applies to the development.

Land Use Table - Zoning

- *Marina site (Nos.2C, 2E, 2F Ridgeway Avenue, and unidentified land/waterway subject to extension, Soldiers Point):* The Marina site is zoned W2 Recreational Waterways and part B1 Neighbourhood Centre. The extension is located on land zoned W2 Recreation and Marinas are a permissible land use in this zone.

The proposed development does not however satisfy the objectives for the W2 Recreational Waterways zone as the ecological, scenic and recreational values of the waterway has not been protected. The applicant has failed to demonstrate that the proposed development does not result in a significant impact to threatened flora and fauna within the locality. Further, as detailed elsewhere within this assessment report the proposed development has been considered likely to result in an adverse visual impact.

- *Car park (on-site):* No.2 Sunset Boulevard is zoned R2 Low Density Residential. Car parking is prohibited in the R2 zone, however the subject site maintains existing use rights. The original marina approval (7-1981-625-1) required the provision of 45 car parking spaces and application 7-1982-1663-1 facilitated construction of 20 of the required spaces at No.2 Sunset Boulevard. The site had previously been rezoned to a 'Special Business Zone' to facilitate the development.

Subsequently, application E827/1994 was approved resulting in the reconfiguration of parking at No.2 Sunset Boulevard to facilitate 24 spaces. It does not appear as though these spaces were constructed and the subject site retains 20 parking spaces. There has however been a continuous use of the site for the purpose of car parking. The applicant's proposal to update line-marking the existing car park has been considered under s.107 *EP&A Act* and s.41 and 44 *EP&A Regs* in relation to existing use rights.

- *Car park (off-site valet parking):* Units 2 & 3, No. 324 Soldiers Point Road, Salamander Bay is zoned B5 Business Development. Car parks are permitted with consent within the B5 zone. The proposed use of the subject site is consistent with the zone objectives.

Clause 5.1 Classification and reclassification of public land

No. 2A Sunset Boulevard, Soldiers Point (Pt Lot 2071) is classified as community land. Part of this lot is proposed to be reclassified from community to operational land under the *Local Government 1993* (NSW) in order to facilitate a future licence agreement with Soldiers Point Marina. The same part of this lot is proposed to be rezoned from RE1 Public Recreation to B1Neighbourhood Centre under LEP2013 to reflect the adjoining commercial zone.

These proposed amendments are contained within the Draft Plan titled Local Environmental Plan 2013 (Amendment No.10), which was supported by Council at the Ordinary Meetings of 12 May 2014 and 14 October 2015. The amendment is currently being reviewed by NSW Parliamentary Counsel prior to gazettal.

Clause 5.5 Development within the coastal zone

Clause 5.5 seeks to provide for the protection of the coastal environment and the implementation of the principles in the NSW Coastal Policy in order to benefit both present and future generations through promoting the principles of ecologically sustainable development. 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, or is satisfied, of matters relating to public access, site suitability and the like. The provisions of cl.5.5 mirror the matters for consideration detailed within SEPP No.71. A detailed assessment of these provisions is held within the SEPP No.71 discussion located elsewhere within this report.

Clause 5.7 Development below mean high water mark

The objective of cl.5.7 is to ensure appropriate environmental assessment for development carried out on land covered by tidal waters. Development consent is therefore required under this clause to carry out development on any land below the mean high water mark of any body of water subject to tidal influence. The applicant has sought development consent for the proposed development satisfying the objectives of this clause.

Clause 5.10 Heritage conservation

The objectives of cl.5.10 include the conservation of Aboriginal objects and Aboriginal places of heritage significance. Consent is required for works which will result in impacts to items of heritage significance and where a site is identified as an Aboriginal place of heritage significance the consent authority is required to consider the effect of the proposed development upon 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. Further, the consent authority must notify the local Aboriginal communities of the applicant in writing or by another manner as may be appropriate and consider any response received.

As detailed within the SEPP No.71 discussion above the Soldiers Point area is a highly significant landscape to the Worimi people. Further, the Worimi people own the adjoining Dowadee Island in freehold and maintain an undetermined land claim

(ACC: 6686) over the waterways subject to the proposed extension. Council staff advised WLALC of the development proposal and a number of submissions have been received. .

OEH have advised that the proposed development has potential to be detrimental to both the cultural and archaeological significance of the locality. General Terms of Approval (GTAs) with respect to Aboriginal Cultural Heritage cannot be issued by OEH until a satisfactory Aboriginal Cultural Heritage Assessment (application as required by s.80D *NPW Regs*) has been undertaken. The development fails to satisfy cl. 5.10 as it may result in adverse impacts to Aboriginal Culture and Heritage.

Clause 7.1 Acid Sulfate Soils

The sites subject to construction works with potential to impact upon Acid Sulfate Soils are limited to the Marina Facility at No. 2C, 2E and 2F Ridgeway Avenue. The land is mapped as Acid Sulfate Soils class 1. The applicant has provided an Acid Sulfate Assessment prepared by Coffey Geotechnics. As the proposed works are below water and unlikely to be exposed to oxygen, the risk has been identified by low. Further, the EPA have provided GTA's in relation to the piling method proposed by the applicant and have recommended conditions to ensure that the construction methods and piling methodology does not adversely upon acid sulfate soils.

Clause 7.6 Essential services

Clause 7.6 requires that the consent authority ensure that essential services are available or that adequate arrangements can be made for such services. Essential services are available to all sites subject to this development application.

5.4.2. Section 79C(1)(a)(ii) any draft environmental planning instrument that is or has been placed on public exhibition

There is no exhibited draft environmental planning instrument relevant to the application.

5.4.3. Section 79C(1)(a)(ii) any development control plan (and section 94 plan)

The following sections of the Port Stephens Development Control Plan 2014 (DCP2014) are relevant to the proposal:

Section A – Introduction

Part A.12 Development notification

The proposal was advertised and notified for a period of 30 days from 24 September 2015 to 24 October 2015 (with an extension given upon request to 7 November 2015) in accordance with the *EP&A Act*, *EP&A Regs* and Section A of DCP2014. Council received 214 submissions from 174 people during the exhibition period as detailed elsewhere within this report.

Section B – General Controls

Part B2 – Natural resources

The impacts of the development upon natural resources, including threatened flora and fauna, and coastal processes have been considered at Section 5.1 and Section 5.4.1 (SEPP No.71) of this report. The proposed development is unsatisfactory.

Part B3 – Environmental management

B3.B Acid Sulfate Soils

Refer to cl.7.1 discussion at section 5.4.1. The proposed development does not result in adverse impacts to Acid Sulfate Soils.

B3.C Contaminated Land

Refer to SEPP No.55 discussion at section 5.4.1. The proposed development does not impact upon contaminated land.

B3. D Air Quality

The proposed development shall not result in impacts to air quality as a result of dust or odour either during construction or whilst in operation. An air quality report is not required for this type of development under DCP2014.

B3.E Noise

The applicant has submitted an Acoustic Report prepared by Acoustic Directions and dated September 2013. The Acoustic Report considered the impact of piling work on nearby residents and utilised sound pressure levels for each aspect of the proposed piling as taken from identical piling operations as undertaken at a marina site. The Acoustic Report concluded that the tapping component of the piling noise exceeds the adopted criteria by up to 25 dB. Yet the tapping process is anticipated to last no more than one minute. The net impact on receivers is therefore lessened as the impact does not occur continuously during the day. Further, noise and vibration measures, such as noise and vibration monitoring, time management, restrictions to truck movements and operational conditions, could be implemented in order to mitigate impacts to surrounding residents.

In addition the EPA have provided GTA's which restrict hours of operation during construction, including a condition that specifies if complaints are received the licensee must undertake appropriate attended noise/ vibration monitoring and determine appropriate management action to reduce impacts. Conditions of consent were also recommended with regard to the marina operation, in particular restrictions pertaining to boat maintenance involving power equipment.

As the noise and vibration impacts are limited to construction of the extension and shall not continue once works are completed the proposal is satisfactory with regards to noise impacts subject to conditions of consent.

B3.F Earthworks

The applicant has submitted a Coastal Processes and Navigation Assessment prepared by Royal Haskoning DHV dated October 2014. The Assessment Report specifies that tidal currents and currents induced by wind wave action have the potential to resuspend and/or transport sediments within the study area. The applicant has concluded that the proposal can be suitably managed to deal with this issue due to low piling density and less than 10% occupation of the waterway area by proposed structures.

However, anecdotal information was received during the public exhibition process as to the impacts of the existing Marina to the foreshore. Aerial imagery has also demonstrated that the Marina may have had an impact. It is widely accepted that the addition of manmade structures into a natural marine environment will alter sand movement and water flows. There has been limited information submitted with the application with regards to this matter. Council staff are not satisfied that the proposed development will not result in adverse environmental impacts arising from erosion and sedimentation changes to the existing waterway and foreshore.

B3.G Waste

The applicant's EIS specifies that waste management during construction will be undertaken in accordance with the Construction Management Plan which will be prepared at Construction Certificate stage. There are no amendments proposed to the waste management of the existing marina facility i.e. fuel storage and the like. Current waste service practices will be extended to the additional berths, including daily garbage collection services. It is anticipated that the existing bulk storage of waste generated at the site will be adequate to accommodate the proposed extension.

The GTAs issued by the EPA include conditions of consent pertaining to waste management. The conditions address the management of bilge waters and contaminated water from moored vessels and works undertaken on the sites slipway. The waste management associated with the proposed development is satisfactory subject to conditions of consent.

Part B4 – Drainage and water quality

The EIS submitted with the application specifies that the Marina Environmental Manual (MEM) operated by the applicant will continue operation in relation to the expanded facility. The MEM addresses measures for the containment of pollutants. Further, appropriate mitigation measures will be employed during construction and during on-going maintenance to ensure that water quality objectives are maintained. Mitigation measures will also be employed during construction to mitigate sediment control and potential disturbance of contaminated sediments. Operational waste management will be maintained in accordance with current management practices and includes provisions of daily garbage collections.

It is noted that EPA have provided GTAs with regard to water quality during construction. On this basis the application is satisfactory. It is noted that there are no

changes to the land based component of the existing development and there are no relevant matters for consideration relating to stormwater management and drainage.

Part B5 – Flooding

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

Part B6 – Essential services

Refer to cl.7.6 discussion at section 5.4.1. Essential services are provided to all sites subject to the application.

Part B8 - Heritage

Refer to discussion at section 5.3 and section 5.4.1 SEPP No.71. The applicant has failed to provide an Aboriginal Cultural Heritage Assessment. The application is unsatisfactory with regards to aboriginal heritage.

With regards to European heritage it is noted that the site is not listed as an item of heritage value, nor is the site located within the vicinity of a listed item. Further consideration of European heritage is not warranted.

Part B9 – Road network and parking

The current Marina has provision of 21 car parking spaces on site. These spaces are dedicated to paid parking and access is restricted via a boom gate. An additional seven spaces are located on Council land in proximity to the Marina and are understood to be subject to a future lease agreement. Therefore, 28 spaces have been taken to cater for the existing Marina Development.

The current parking supply serving the existing Marina does not satisfy current demand, which is evidenced by the surveyed proportionally high loop road usage without stopping due to lack of parking supply, fully utilised on/off street parking areas during peak season surveys and the observation that during peak periods customers of the Marina are accessing on-street car parking in Soldiers Point Road, Ridgeway Avenue, Sunset Blvd and Resthaven Avenue. The historic shortfall of car parking at the site is also noted. As a result, Council Officers do not support the recommendations made in the Traffic Impact Assessment (TIA) submitted with the DA which adopt a car parking rate of 0.3 spaces per wet berth. It is also noted that a rate of 0.6 spaces per wet berth has been adopted in both the RMS Guide to Traffic Generating Developments and Council's Development Control Plan 2014. Additionally, a rate of 0.5 spaces for employee and employee bicycle parking is also warranted.

It has been estimated that the proposed Marina Development requires provision of approximately 93 spaces (based upon six employees). Further, this rate does not include consideration to the existing business operating at the Marina (including the restaurant) which are a relevant considerations that have not been addressed within the application. Notwithstanding, based upon the 149 berth Marina only a deficiency of 65 spaces exists at the site.

Council officers have considered the proposal to address car parking shortfall off site by the provision of 33 valet car parking spaces and found that the solution does not mitigate the parking deficiency. The solution results in the loss of two spaces at the Marina site to accommodate drop off and pick up resulting in a further reduction in parking availability at the site. Further, peak parking demand survey within the TIA noted that the paid off-street Marina parking retained approximately 40% surplus capacity, whilst the complimentary on and off street parking was at full capacity. This indicates a reluctance to utilise paid parking even when located within direct proximity to the site. The valet parking option as the only car parking solution will not mitigate the impacts of the development upon the usage of community on-street parking. The failure to provide adequate car parking on site to cater for the development is not acceptable.

Port Stephens Section 94A Development Contribution Plan

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

5.4.4. Section 79C(1)(a)(iv) the regulations (and other plans and policies)

Section 93 – Fire safety and other considerations

The extension of the marina facility required the installation of a fire hydrant in order to satisfy fire safety requirements. This matter could be addressed by way of conditions of consent.

Section 49 – Persons who can make development applications

Section 49 *EP&A Regs* provides that a development application may be made by the owner of the land or a person with the written consent of the owner. The applicant has not provided strata owners consent in relation to Lot 0 SP 59025 – Unit 2 & 3, No.324 Soldiers Point Road, Salamander Bay. The use of the site for valet car parking will require access over common property.

Government Coastal Policy

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

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

AS3962-2001 Guidelines for design of marinas (AS3962)

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

The development does not satisfy section 2 of AS3962-2001 as the submitted Coastal and Hydrological Assessment report is inadequate. Sand movement in the Port is highly complex and the level of modelling completed and data relied upon is insufficient. The applicant has not demonstrated that the extension of the marina will not determinately impact upon existing tidal flows, or that adverse environmental impacts such as beach erosion will not result from approval of the proposal.

Lower Hunter Regional Strategy

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

Hunter and Central Coast Regional Environmental Management Strategy

The Hunter and Central Coast Regional Environmental Management Strategy (HCCREMS) is a framework developed to guide Hunter and Central Coast Regional Council in addressing environmental issues at a regional scale. The HCCREMS framework provides flora and fauna survey guidelines volumes 1 & 2.

The SIS submitted with the application is considered inadequate. Based upon the information available to Council to date the proposed development is considered likely to have an adverse impact to the environment and local endangered fauna. The proposal is not consistent with HCCREMS.

Port Stephens Planning Strategy 2011-2036

The Port Stephens Planning Strategy (PSPS) responds to the State Government's Lower Hunter Regional Strategy and Lower Hunter Regional Conservation Plan by providing local level detail, and by incorporating the results of more recent studies, such as the Port Stephens Commercial and Industrial Land Study and the Rural Lands Study. The primary purpose of the PSPS is to guide land use planning and decision making for development and environmental outcomes. The PSPS provides the framework for the broad strategic base to manage growth and is supplemented by the development of sub-strategies to provide an additional level of detail for specific areas or issues.

The PSPS recognises that the Soldiers Point locality is predominantly a coastal village area. Opportunities exist for increasing densities to maximise access to existing infrastructure however, it is likely to yield only a small amount of new

dwellings. No large scale new release area available, only potential is for limited small scale infill.

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

Port Stephens /Myall Lakes Estuary Management Plan

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

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

Port Stephens Foreshore Management Plan

The Estuary Management Plan identified the 'naturalness' of the foreshore of the estuary as one of its greatest assets. The Foreshore Management Plan provides a guide for the long term management of the Port Stephens Estuary Foreshore in order to protect its environmental, recreational, economic and cultural values. The Plan provides a comprehensive review of the assets, conditions and values of the Port Stephens Foreshore. It identifies that: a) the character of the Foreshore is one of the most significant residential and tourist attractors to the area, b) the Foreshore supports areas of ecological significance, c) visual amenity is best protected through concentrating urban development within existing areas and minimising development on ridgelines and the immediate foreshore, and there are many places (including the entire Foreshore) which are of significance to the Aboriginal community, but which do not have evidence of physical occupation.

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

Urban Stormwater and Rural Water Quality Management Plan

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

In general, water quality in the Soldiers Point area is of an acceptable standard however nutrients and faecal coliform levels are of concern from some drainage networks following rainfall. Potential exists for improving stormwater quality, through the implementation of management strategies, in particular those related to non-structural source control. Water quality data has also been obtained from the Hunter Water Corporation for Soldier Point. While this does not provide data on stormwater quality it does provide information on the quality of receiving waters.

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

5.4.5. Section 79C(1)(b) the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Section 79C(1)(b) requires the likely impacts of the development (including environmental impacts on both the natural and built environments) and social and economic impacts in the locality to be taken into consideration. The following is an assessment of the impacts of the current proposal that have not been covered elsewhere within this report.

Marine Safety and Navigation

Navigation and marine safety has been identified in the DGRs as a matter to be addressed by the applicant, and include; weather protection, the impacts on water based traffic and waterway users (including recreational boaties and fishers) waterway sharing, impacts on other existing users of Port Stephens and access to any swing moorings.

Wind, wave and current loads have the potential to impact upon the marina and vessels utilising the waterways. The wind climate in the locality is described as incurring stronger westerly and north-westerly winds in winter, with easterly and south-easterly winds in summer. The wind impacts to the proposal are considered limited due to the siting and design of the marina mooring being bow-stern in context of the dominant winds between Soldiers Point and Dowadee Island. Swell waves are not dominant in the locality and the Coastal Process and Navigation Assessment prepared by Royal Haskoning DHV has determined that the development that subject to restraint of vessels by piles and roped moorings, designed to accommodate peak currents, the marina can provide adequate weather protection for moored vessels.

The proposal results in the reduction of the existing Navigation Channel to approximately 40 metres when taken from the marina footprint. The reduction of the width of the Navigation Channel, and the location of the channel within shallow waters, were raised as a key concern during the public exhibition process. Council referred the application RMS for comments in regards to the adequacy of the Navigation Channel. In response RMS provided conditions of consent and raised no objection subject to the width of channel being maintained at 40 metres between the

boundary of the oyster lease adjacent to Dowadee Island and the footprint of the marina. RMS confirmed that the tidal flow of 1.6 knots utilised within the applicants studies had been confirmed by a study commissioned by RMS. A designated 4 knot speed zone is established in the area and RMS considers that this enhances navigation safety.

On the basis of the conditions and comments provided by RMS dated 3 February 2016, the proposed development is satisfactory with regards to marine safety and navigation.

Disability access

The applicant has provided an Accessibility Report, prepared by Accessibility Solutions which addresses disability access to the marina berths and building. The Accessibility Report identifies that recommends modifications to the pontoon gangway to ensure that it is consistent with the provisions of AS1428.1. Subject to these upgrades access to the marina berths will comply with the Disability (Access to Premises –Buildings) Standards 2010, Part D3 of the BCA. Further, the Accessibility Report has considered accessible parking and access to the marina buildings and facilities. It is identified that there is no disabled access to the first floor, however, the report concludes that partial access to areas of the ground floor, such as the restaurant, beauty salon and unisex accessible toilet results in the existing building reasonably satisfying the primary objectives of the Disability Discrimination Act.

It is noted that the applicant does not propose any building works to the existing marina building, as such the provisions of the Disability (Access – Buildings) Standards 2010 are not enlivened and Council cannot require that the applicant undertake upgrades. Access to the marina berths will comply with the relevant standard and is therefore acceptable.

Ecologically Sustainable Development (ESD)

Section 5(a)(vii) *EPA Act* provides that an objective of the Act is to encourage ESD, and is a relevant matter for consideration under s.79C *EPA Act*. The precautionary principle forms an integral component of ESD as referenced in *BGP Properties Pty Limited v Lake Macquarie City Council* [2004] NSWLEC399 (12 August 2004) and *Telstra Corporation v Hornsby Shire Council* [2006] NSWLEC 133. The precautionary principle establishes that should there be any threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

Council has applied the precautionary principle in its assessment and determined that there is insufficient information to support the proposal in light of potential impacts to the 'critically endangered' Beach Stone Curlew. Based upon assessment of these documents it is concluded that the proposal may pose a threat of serious or irreversible environmental damage. Precautions to avoid environmental damage cannot be effectively implemented through the imposition of consent conditions. Further ecological and hydrological studies are required. The development proposal cannot be supported in its current form. In this regard, the principles of ESD stipulate that the conservation of biological diversity and ecological integrity should be a

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

Further, the principles of ESD include the notion of inter-generational equity, which requires that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations. The assessment of the proposal has established that the development has the potential to have significant impact upon ecology and critically endangered species, and unknown impact to hydrology and Aboriginal cultural heritage. Further, the change in the visual appearance of the Soldiers Point Marina will impact upon future (and current) generations perceptions and appreciate of the Soldiers Point aesthetic qualities.

5.4.6. Section 79C(1)(c) the suitability of the site for the development

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

Given the significant site constraints affecting the proposed marina expansion site, including adverse impacts to ecology and Aboriginal Cultural Heritage, coupled with existing parking/traffic issues within the Soldiers Point locality, the existing Soldiers Point Marina not an appropriate site for the scale of Marina facility proposed.

5.4.7. Section 79C(1)(d) any submissions made in accordance with this act or the regulations

Submissions from Public Authorities

Agency	Summary of final comment	Annexure
NSW Department of Primary Industries (Fisheries) (Approval Body s.205 of the <i>Fisheries Management Act</i> 1994).	General Terms of Approval provided.	3
NSW Department of Primary Industries (Great Lakes Marine Park) – Marine Park Authority	No objection to the proposal.	4
NSW Environmental Protection Authority (Approval Body, <i>Protection of the Environment Operations Act</i> 1997)	General Terms of Approval provided.	5
Roads and Maritime Services (RMS)	Conditions of consent provided.	6
Office of the Environment and Heritage (SIS concurrence)	Concurrence was not provided as the SIS submitted was considered to be inadequate.	7

Office of the Environment and Heritage (<i>Section 90 National Parks and Wildlife Act</i>)	Integrated approval not granted as an Aboriginal Cultural Heritage Assessment was not submitted.	8
NSW Office of Water (<i>Section 91 Water Management Act 2000</i>)	No objection. The proposed activity occurs on waterfront land but as the works appear to be on Crown Land the works are exempt from a Controlled Activity Approval.	9
NSW Department of Planning and Environment	No response received.	N/A
Hunter Water Corporation	No response received.	N/A

Public submissions

The proposal was advertised and notified for a period of 30 days from 24 September 2015 to 24 October 2015 (with an extension given upon request to 7 November 2015) in accordance with the *EP&A Act*, *EP&A Regs* and Section A of DCP2014.

It is noted that Council's public advertisement was not published with the required heading 'development proposal' in capital letters, as required in accordance with s.78 *EP&A Regs*. The public advertisement was republished with the required heading. However, Council determined not to re-exhibit the application as a number of significant information deficiencies had been identified. Council intended to re-exhibit the application once all required information had been received to ensure that members of the community had the opportunity to view and make comment upon all information relevant to the proposal.

Council received 214 submissions from 174 people during the exhibition period as detailed below:

Issue	Comment
Environmental impact: including impacts to flora and fauna and foreshore erosion.	Discussed at section 5.1. The environmental impacts of the proposal are unacceptable. It is agreed SIS submitted with the application is inadequate and that the proposal has the potential to adversely impact upon the environment.
Impact to Aboriginal Culture and Heritage	Discussed at section 5.3 and section 5.4.1 SEPP No.71. An Aboriginal Cultural Heritage Assessment has not been provided. It is agreed that the proposal may result in adverse impacts to Aboriginal Culture and Heritage.
Parking and Traffic: lack of existing parking, congestion, safety concerns, issues regarding the adequacy of proposed valet parking.	Discussed at section 5.4.4 DCP2014 Part B9 – Road network and parking. It is agreed that parking and traffic impacts of the development are unsatisfactory.
Navigational safety and impacts to recreational users of the waterway: including the removal of swing moorings, reduction in navigational channel, location of navigational channel within shallow waters.	Discussed at section 5.4.5. RMS have raised no objection to the proposal subject to conditions of consent.

Impacts to tidal flows and coastal processes: including potential foreshore erosion.	Discussed at section 5.4.1 SEPP No.71 assessment. It is agreed that the information provided with the application with regards to hydrological and coastal processes.
Impacts to oyster industry: including economic impacts, health/quality production, tidal flows/water pollution/silt deposits.	Discussed at section 5.4.1 SEPP No.62. Insufficient information has been provided. It is agreed that the consent authority cannot be certain that the proposed development will not result in adverse impacts to the oyster industry.
Public interest: transfer of public waterway for commercial use, loss of recreational waterway.	Discussed at section 5.4.8 (below). The proposed development is not considered to be in the public interest.
Fire safety: increased risk to property and life.	Discussed at section 5.4.4. The development would require the installation of a fire hydrant to comply with fire safety requirements.
Access and facilities for the disabled.	Discussed at section 5.4.5. The propose development is satisfactory subject to upgrading of the pontoon in accordance with the premise standard.
Amenity: including overdevelopment of the site, site suitability and visual impact.	Discussed at section 5.4.1 SEPP No.71 assessment. It is agreed that the proposed development is not suitable for the site and will result in an adverse visual impact.
Pollution: including impacts to water quality, effluent disposal, odour, light and sound pollution.	Discussed at section 5.4.4 DCP2014 Part B4 – Drainage and water quality. It is considered that the mitigation measures could be implemented on site to address pollution impacts.
Inadequate DA Documentation: including inadequate SIS and Coastal and Hydrological Assessment, lack of strategic context, and public exhibition process.	Detailed in section 7 reasons for refusal. It is agreed that insufficient information has been provided.
Non-Compliance with previous conditions of consent: including provision of car parking, and existing businesses operating within the marina complex.	Historic shortfall in car parking is discussed at section 3 and section 5.4.4 DCP2014 Part B9 – Road network and parking. A detailed assessment of the commercial uses of the marina complex was not a relevant consideration to this application. However, the existing uses and car parking demand were considered as part of the assessment.
Location of existing fuel tanks	A number of submissions raised concerns that the facilities existing fuel tanks were located within land owned by Hunter Water Corporation. The applicant has not provided information in relation to the location of the existing fuel tanks. The development does not involves works to the existing tanks and as such this matter is not relevant to the assessment of the current proposal.

5.4.8. Section 79C(1)(e) the public interest

The proposed marina expansion does not provide a public benefit, the development results in adverse impacts to local ecology and potential significant impact to Endangered Species. Further, the expansion has an unacceptable visual impact when viewed from public places along the Soldiers Point Foreshore area (Sunset Beach and Everitt Park). The benefits of the proposal are limited to the private benefit to existing and future patrons of the Marina facility by way of provision of additional berthing opportunities. However, the private benefits to boat owners, through improved boating facilities, is not of sufficient weight to justify the expansion of the existing marina facilities. The proposal is not considered to be satisfactory in terms of the public interest.

6. CONCLUSION

It is recommended that the JRPP, as the consent authority, refuse development consent to 16-2015-586-1 (2015HCC025), for Marina – Extension to existing marina (additional 59 berths) and car parking, at Nos. 2C, 2E and 2F Ridgeway Avenue, Soldiers Point (Lot 539 DP 823769, Lot 1 and 2 DP 1058490), Unidentified land/waterway subject to lease extension at Soldiers Point, No. 2 Sunset Boulevard, Soldiers Point (Lot 197 DP 27084), and Unit 2 & 3, No. 324 Soldiers Point Road, Salamander Bay (Lot 0 SP 59025), be refused for the reasons set out in Section 7 below.

7. REASONS FOR REFUSAL

1. Insufficient and inadequate information has been provided in order to facilitate a thorough assessment of the development including the following:
 - Aboriginal Cultural Heritage Assessment
 - Species Impact Statement
 - Coastal and Hydrological Assessment
 - Visual Impact Assessment
2. The development is inconsistent with the aims of the State Environmental Planning Policy No.71 (Coastal Protection) as it has the potential to significantly impact upon Critically Endangered Species (Beach Stone Curlew), impact the visual amenity of the Soldiers Point Foreshore, and have an unknown impact upon Aboriginal Culture and Heritage in the locality (s.79C(a)(i) *EP&A Act 1979*).
3. The development is inconsistent with the aims and objectives of the W2 Recreational Waterways zone, as it has the potential to adversely impact upon the natural environment and coastal processes (s.79C(1)(a)(i) *EP&A Act 1979*).
4. The development fails to conform to the controls contained within Port Stephens Development Control Plan (B2 Natural Resources, B3 Environmental Management and B9 Road Network and Parking)(s.79C(1)(a)(iii) *EP&A Act 1979*).

5. The development has the potential to result in an impact to the environment, in particular the critically endangered Beach Stone Curlew (s.79C(1)(b) *EP&A Act 1979*).
6. The development has the potential to adversely impact the environment, ecology, Aboriginal Culture and Heritage and visual amenity and therefore the site is not suitable for the development (s.79C(1)(c) *EP&A Act 1979*).
7. The development is inappropriate for the site given existing site constraints (car parking, ecology and Aboriginal Culture and Heritage) and the character of the locality and is therefore not in the public interest (s.79C(1)(e) *EP&A Act 1979*).

Signed (Assessing Officer)


Amy Stone

Senior Executive Planner

05/02/16
Date

Signed (Supervising Officer)


Cindy Dickson
**Planning and Developer
Relations Coordinator**

5/2/16
Date

**Authorised for submission
to the JRPP**


Mike McIntosh
**Group Manager
Development Services**

5/2/16
Date

ANNEXURE 1: DEVELOPMENT PLANS

1. Site plan - marina extension
2. Plan of relinquished swing moorings
3. Site plan - valet parking

This aerial map illustrates the Soldiers Point area, featuring a proposed navigation channel and existing oyster leases. The map includes the following elements:

- Proposed Navigation Channel:** A central waterway with depth markers (e.g., 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50, 52, 54, 56, 58, 60, 62, 64, 66, 68, 70, 72, 74, 76, 78, 80, 82, 84, 86, 88, 90, 92, 94, 96, 98, 100, 102, 104, 106, 108, 110, 112, 114, 116, 118, 120, 122, 124, 126, 128, 130, 132, 134, 136, 138, 140, 142, 144, 146, 148, 150, 152, 154, 156, 158, 160, 162, 164, 166, 168, 170, 172, 174, 176, 178, 180, 182, 184, 186, 188, 190, 192, 194, 196, 198, 200, 202, 204, 206, 208, 210, 212, 214, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 236, 238, 240, 242, 244, 246, 248, 250, 252, 254, 256, 258, 260, 262, 264, 266, 268, 270, 272, 274, 276, 278, 280, 282, 284, 286, 288, 290, 292, 294, 296, 298, 300, 302, 304, 306, 308, 310, 312, 314, 316, 318, 320, 322, 324, 326, 328, 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, 410, 412, 414, 416, 418, 420, 422, 424, 426, 428, 430, 432, 434, 436, 438, 440, 442, 444, 446, 448, 450, 452, 454, 456, 458, 460, 462, 464, 466, 468, 470, 472, 474, 476, 478, 480, 482, 484, 486, 488, 490, 492, 494, 496, 498, 500, 502, 504, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 528, 530, 532, 534, 536, 538, 540, 542, 544, 546, 548, 550, 552, 554, 556, 558, 560, 562, 564, 566, 568, 570, 572, 574, 576, 578, 580, 582, 584, 586, 588, 590, 592, 594, 596, 598, 600, 602, 604, 606, 608, 610, 612, 614, 616, 618, 620, 622, 624, 626, 628, 630, 632, 634, 636, 638, 640, 642, 644, 646, 648, 650, 652, 654, 656, 658, 660, 662, 664, 666, 668, 670, 672, 674, 676, 678, 680, 682, 684, 686, 688, 690, 692, 694, 696, 698, 700, 702, 704, 706, 708, 710, 712, 714, 716, 718, 720, 722, 724, 726, 728, 730, 732, 734, 736, 738, 740, 742, 744, 746, 748, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, 770, 772, 774, 776, 778, 780, 782, 784, 786, 788, 790, 792, 794, 796, 798, 800, 802, 804, 806, 808, 810, 812, 814, 816, 818, 820, 822, 824, 826, 828, 830, 832, 834, 836, 838, 840, 842, 844, 846, 848, 850, 852, 854, 856, 858, 860, 862, 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, 892, 894, 896, 898, 900, 902, 904, 906, 908, 910, 912, 914, 916, 918, 920, 922, 924, 926, 928, 930, 932, 934, 936, 938, 940, 942, 944, 946, 948, 950, 952, 954, 956, 958, 960, 962, 964, 966, 968, 970, 972, 974, 976, 978, 980, 982, 984, 986, 988, 990, 992, 994, 996, 998, 1000, 1002, 1004, 1006, 1008, 1010, 1012, 1014, 1016, 1018, 1020, 1022, 1024, 1026, 1028, 1030, 1032, 1034, 1036, 1038, 1040, 1042, 1044, 1046, 1048, 1050, 1052, 1054, 1056, 1058, 1060, 1062, 1064, 1066, 1068, 1070, 1072, 1074, 1076, 1078, 1080, 1082, 1084, 1086, 1088, 1090, 1092, 1094, 1096, 1098, 1100, 1102, 1104, 1106, 1108, 1110, 1112, 1114, 1116, 1118, 1120, 1122, 1124, 1126, 1128, 1130, 1132, 1134, 1136, 1138, 1140, 1142, 1144, 1146, 1148, 1150, 1152, 1154, 1156, 1158, 1160, 1162, 1164, 1166, 1168, 1170, 1172, 1174, 1176, 1178, 1180, 1182, 1184, 1186, 1188, 1190, 1192, 1194, 1196, 1198, 1200, 1202, 1204, 1206, 1208, 1210, 1212, 1214, 1216, 1218, 1220, 1222, 1224, 1226, 1228, 1230, 1232, 1234, 1236, 1238, 1240, 1242, 1244, 1246, 1248, 1250, 1252, 1254, 1256, 1258, 1260, 1262, 1264, 1266, 1268, 1270, 1272, 1274, 1276, 1278, 1280, 1282, 1284, 1286, 1288, 1290, 1292, 1294, 1296, 1298, 1300, 1302, 1304, 1306, 1308, 1310, 1312, 1314, 1316, 1318, 1320, 1322, 1324, 1326, 1328, 1330, 1332, 1334, 1336, 1338, 1340, 1342, 1344, 1346, 1348, 1350, 1352, 1354, 1356, 1358, 1360, 1362, 1364, 1366, 1368, 1370, 1372, 1374, 1376, 1378, 1380, 1382, 1384, 1386, 1388, 1390, 1392, 1394, 1396, 1398, 1400, 1402, 1404, 1406, 1408, 1410, 1412, 1414, 1416, 1418, 1420, 1422, 1424, 1426, 1428, 1430, 1432, 1434, 1436, 1438, 1440, 1442, 1444, 1446, 1448, 1450, 1452, 1454, 1456, 1458, 1460, 1462, 1464, 1466, 1468, 1470, 1472, 1474, 1476, 1478, 1480, 1482, 1484, 1486, 1488, 1490, 1492, 1494, 1496, 1498, 1500, 1502, 1504, 1506, 1508, 1510, 1512, 1514, 1516, 1518, 1520, 1522, 1524, 1526,


[illegible]

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47	17-18-19	1997-1998	1997
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50	21-22-23	2000-2001	2000
51	22-23-24	2001-2002	2001
52	23-24-25	2002-2003	2002
53	24-25-26	2003-2004	2003
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55	26-27-28	2005-2006	2005
56	27-28-29	2006-2007	2006
57	28-29-30	2007-2008	2007
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61	32-33-34	2011-2012	2011
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63	34-35-36	2013-2014	2013
64	35-36-37	2014-2015	2014
65	36-37-38	2015-2016	2015
66	37-38-39	2016-2017	2016
67	38-39-40	2017-2018	2017
68	39-40-41	2018-2019	2018
69	40-41-42	2019-2020	2019
70	41-42-43	2020-2021	2020
71	42-43-44	2021-2022	2021
72	43-44-45	2022-2023	2022
73	44-45-46	2023-2024	2023
74	45-46-47	2024-2025	2024
75	46-47-48	2025-2026	2025
76	47-48-49	2026-2027	2026
77	48-49-50	2027-2028	2027
78	49-50-51	2028-2029	2028
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93	64-65-66	2043-2044	2043
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97	68-69-70	2047-2048	2047
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103	74-75-76	2053-2054	2053
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105	76-77-78	2055-2056	2055
106	77-78-79	2056-2057	2056
107	78-79-80	2057-2058	2057
108	79-80-81	2058-2059	2058
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114	85-86-87	2064-2065	2064
115	86-87-88	2065-2066	2065
116	87-88-89	2066-2067	2066
117	88-89-90	2067-2068	2067
118	89-90-91	2068-2069	2068
119	90-91-92	2069-2070	2069
120	91-92-93	2070-2071	2070
121	92-93-94	2071-2072	2071
122	93-9		

SOLDIERS POINT MARINA
PROPERTY
HAMPTONS PROPERTY SERVICE

SOLDIERS POINT MARINA
SUNSET BOULEVARD SOLDIERS POINT MARY
SITE PLAN

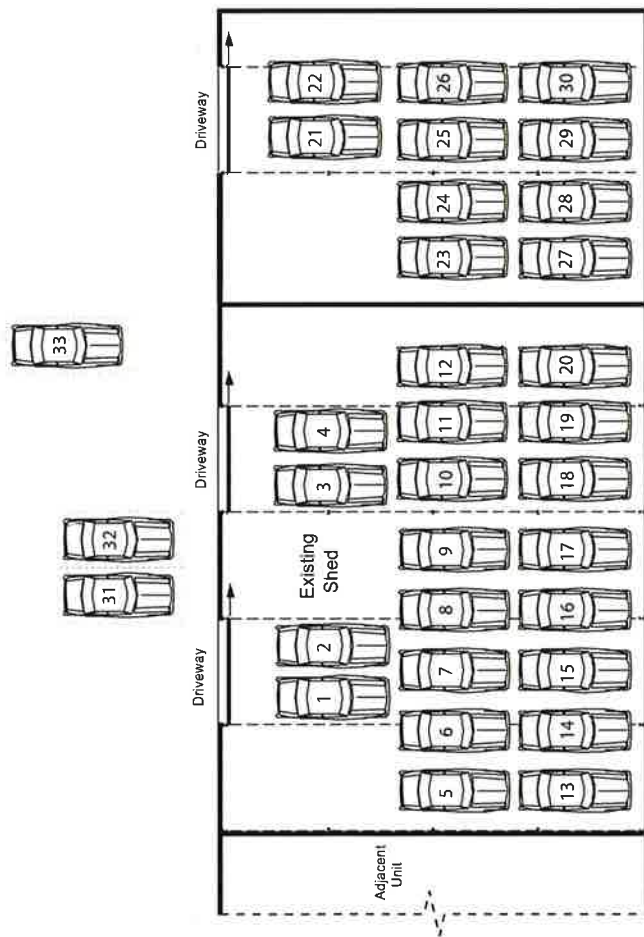
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SCALE NTS



AERIAL

SCALE NTS



FLOOR PLAN (33 SPACES)

SCALE 1:200 @ A3



TITLE:

VALET CAR PARKING LAYOUT

DRAWING No. DWG-001

ANNEXURE 2:

VISUAL IMPACT ASSESSMENT



Viewpoint 1



Viewpoint 2

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

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

ANNEXURE 3:
NSW DEPARTMENT OF PRIMARY INDUSTRIES
(FISHERIES)



Department of
Primary Industries

PORT STEPHENS COUNCIL
Information Services

13 OCT 2015

File No.

Action by

OUT15/28088

Amy Stone
Port Stephens Council
PO Box 42
Raymond Terrace NSW 2324

Dear Ms Stone

Proposed marina and depot – extension to Soldiers Point Marina

The NSW Department of Primary Industries (Fisheries NSW) is responsible for ensuring that fish stocks are conserved and that there is no net loss of key fish habitats upon which they depend. To achieve this, NSW DPI ensures that developments comply with the requirements of the *Fisheries Management Act 1994* (namely the aquatic habitat protection and threatened species provisions in Parts 7 and 7A of the Act, respectively), and the associated *Policy and Guidelines for Aquatic habitat Management and Fish Conservation (2013)*. The Aquatic Ecosystems unit has reviewed this proposal in light of these provisions and has no objections. Please contact Scott Carter (Regional Manager Central/Metro) on 02 4916 1232 if any further information is required.

Fisheries NSW is also responsible for the promotion of a viable and environmentally sustainable aquaculture industry. The NSW Oyster Industry Sustainable Aquaculture Strategy (OISAS) covers all oyster growing estuaries in NSW. It identifies Priority Oyster Aquaculture Areas (POAAs) for oyster farming in estuaries and incorporates the agreed water quality needs of the oyster industry. OISAS can be accessed at:
<http://www.dpi.nsw.gov.au/fisheries/aquaculture/publications/oysters/industry/industry-strategy>.

It is noted that consultation with the lessee of the nearby oyster lease (OL75/176, parts 1 and 2) and the department has previously been undertaken in relation to the proposed marina extension, however it is recommended that the proponent consults with the lessee in relation to the current development application.

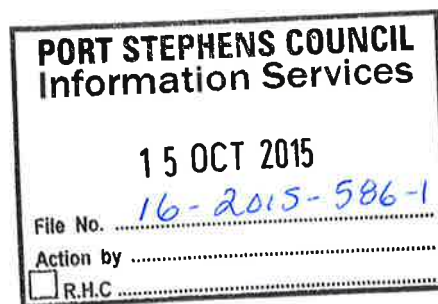
The previous consultation with Fisheries NSW resulted in an amendment to the marina such that infrastructure associated with the extended marina was 50 metres from the oyster lease and in compliance with the requirements of OISAS. The Environmental Impact Statement (EIS) for the current proposal (Hamptons Property Services Pty Ltd, 7 September 2015) states that this minimum distance has been retained. Fisheries NSW therefore has no objections to the current proposal. Please contact Katie Sachs (Policy Officer Aquaculture) on 02 49163913 if you require any further information in relation to oyster leases and OISAS.

Yours sincerely

Tim Gippel
Senior Policy Officer Aquaculture
Date: 9 October 2015

ANNEXURE 4:

NSW DEPARTMENT OF PRIMARY INDUSTRIES (GREAT
LAKES MARINE PARK) – MARINE PARK AUTHORITY (MPA)



Our ref: OUT15/27247

General Manager
Attn: Olivia Scott
DAC Administration Officer
Port Stephens Council
PO Box 42
Raymond Terrace NSW 2324

Dear Ms Scott,

Re: Extension to Soldiers Point Marina, relinquishment of swing moorings and car parking provision
Property: Lot 1 DP 1058490, Lot 2 DP 1058490, Lot 197 DP 27084, Lot 539 DP 823769, and Depot Lots 0, 2, and 3 SP 59025.

I refer to your letter dated 21 September 2015, and the Environmental Impact Statement and additional documents provided on Council's website for the above development. As the marina extensions would occur within the Port Stephens-Great Lakes Marine Park, concurrence from the Department is required under Section 55 of the *Marine Estate Management Act 2014*. Thank you for notifying the Department of this development.

For your future reference, please note that the *Marine Parks Act 1997* was repealed and replaced by the *Marine Estate Management Act 2014* in December 2014.

Marinas serve an important function within the estuary by concentrating large numbers of vessels in a relatively small area, reducing the need for private jetties, moorings, slipways, ramps and pontoons, along with the associated environmental impact these often bring to aquatic flora and fauna. Because boat usage within the Port is expected to increase in the future, from an environmental perspective, we regard the proposal as a viable means of meeting this demand.

We note that the proposal differs little from the application referred to the then Marine Parks Authority in 2012. Further, the development occurs within the Soldiers Point Special Purpose Zone, which is zoned for vessel related facilities. Following assessment of the development application, we have no objections.

If you require further information, please don't hesitate to contact Richard McEvilly, Marine Ranger, on (02) 4916 3804.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "L. Erskine".

Luke Erskine
Manager
Port Stephens – Great Lakes Marine Park
12 October 2015

ANNEXURE 5:

NSW ENVIRONMENTAL PROTECTION AUTHORITY (EPA)



Our reference: DOC15/524996; EF13/3936
Contact: Jocelyn Karsten (02) 4908 6865

General Manager
Port Stephens Council
PO Box 42
RAYMOND TERRACE NSW 2324

Attention: Amy Stone

Dear Ms Stone

**INTEGRATED DEVELOPMENT APPLICATION 16-2015-586-1
PROPOSED EXTENSION TO THE EXISTING SOLDIERS POINT MARINA AT SOLDIERS POINT
BY CLIPPERS ANCHORAGE PTY LIMITED**

Reference is made to your letter dated 21 September 2015 received by the Environment Protection Authority enclosing the Development Application 16-2015-586-1 and document titled *Environmental Impact Statement Soldiers Point Marina* by Hamptons Property Services and dated 7 September 2015 (EIA). The EPA also notes your correspondence dated 1 December 2015 advising that the Council has received approximately 200 submissions following the public exhibition of the Development Application.

The EPA understands that the development proposal is for extension of the existing marina at Soldiers Point. The proposed development includes:

- The construction of an additional 59 berths;
- Relinquishment of seven swing moorings and relocation of other swing moorings;
- Line markings to existing car parking; and
- Change of use at an existing offsite industrial warehouse to a Car Park.

The EPA has reviewed the EIS and considered the public submissions submitted to the Council pertaining to the areas regulated by the *Protection of the Environment Operations Act 1997*.

The General Terms of Approval (GTA) for this proposal are provided at Attachment A. If Port Stephens Council decide it appropriate to grant development consent for this proposal these conditions need to be incorporated into the consent.

These GTA relate to the development as proposed in the EIA and documents currently provided to the EPA. In the event that the development is modified either by the applicant prior to the granting of consent or as a result of the condition proposed to be attached to the consent, it will be necessary to consult with the EPA about the changes before the consent is issued. This will enable the EPA to determine whether its GTA need to be modified in light of the changes.

Please contact Jocelyn Karsten on (02) 4908 6865 if you require any further information regarding this matter.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'P. Jamieson', followed by the date '21-12-15'.

PETER JAMIESON
Head Regional Operations Unit – Hunter
Environment Protection Authority

Encl. Attachment A – General Terms of Approval – Clippers Anchorage Soldiers Point Marina Extension

ATTACHMENT A - GENERAL TERMS OF APPROVAL FOR THE PROPOSED SOLDIERIS POINT MARINA EXTENSION, SOLDIERS POINT NSW.

1. EXISTING EPA LICENCE

As you are aware, Clippers Anchorage Pty Ltd (the Licensee), hold an existing Environment Protection Licence (EPL 13207) under the *Protection of the Environment Operations Act 1997* for the premises known as Soldiers Point Marina.

The existing conditions of the EPL are also appropriate for this modification. A copy of the licence can be found on the EPA's Public Register at:

<http://www.epa.nsw.gov.au/prpoeoapp/ViewPOEOLicence.aspx?DOCID=56575&SYSUID=1&LICID=13207>

2. ADDITIONAL CONDITIONS

In addition to the existing conditions, the EPA recommend some additional conditions to regulate the potential increase in noise and water pollution as a result of the expanded marina. These additional conditions are outlined below:

a) Hours of Operation

- **Construction**

- Construction activities must be undertaken between the hours of 7:00am and 5:00pm Monday to Fridays and 8:00am to 1:00pm Saturdays with no work to occur on Sundays and Public Holidays.
- At least a week prior to starting high noise impacts activity (including piling), the licensee must notify sensitive receivers. The notification must include:
 - The type of activity and the daily duration of noise; and
 - A contact name and phone number for complaints.
- If complaints are received the licensee must undertake appropriate attended noise / vibration monitoring and follow the Management of Noise Complaints process to determine appropriate management action to reduce impacts.

- **Marina Operation**

- Boat maintenance involving or requiring the use or operation of power equipment such as tools, generators, lighting plant or pumps, must only be carried out between the hours of 7am and 6pm Monday to Friday, 8am to 1pm Saturdays and at no time on Sundays or Public Holidays.
- Non noisy activities such as roller or brush application of paint or the use of hand tools can still be carried outside the abovementioned hours.

b) Process and Management

- UPSS Management – the licensee must operate any underground petroleum storage systems (UPSS) in accordance with the *Protection of the Environment Operations (Underground Petroleum Storage System) Regulation 2014*.

- Bunding – all above-ground tanks containing material that is likely to cause environmental harm must be bunded or have an alternative spill containment system in place.
 - Bunds must:
 - a) have walls and floors constructed of impervious materials;
 - b) be of sufficient capacity to contain 110% of the volume of the tank (or 110% volume of the largest tank where a group of tanks are installed);
 - c) have floors graded to a collection sump; and
 - d) not have a drain valve incorporated in the bund structure,
- or be constructed and operated in a manner that achieves the same environmental outcome.

c) Waste Management

- The Proponent must ensure that all reasonable and feasible means are implemented to ensure that bilge waters and contaminated water from moored vessels are captured, transported, stored, treated and disposed of by lawful means so as to not cause pollution of waters.
- All works undertaken on the slipway must be completed above the catch drain. The catch drain must be above the waterline at all times when activities are being undertaken on the slipway.
- The catch drain must drain to an adequate and effective dedicated waste management system. This waste management system must not discharge to waters in a manner which may cause pollution of waters.
- The slipway and catch drain must be cleaned of all debris (including any waste from boat maintenance or construction activities) at the end of each working day and ahead of any incoming tides that may impact on the slipway above the line of the catch drain. This debris must be disposed of in a lawful manner.

ANNEXURE 6:

ROADS AND MARITIME SERVICES (RMS)

Ref: MOD16/0034

Ms Olivia Scott
DAC Administration Officer
Development Assessment and Compliance
Port Stephens Council
PO Box 42
Raymond Terrace NSW 2324

Dear Ms Scott

Integrated Development Application No: 16-2015-586-1 Marina and Depot – Extension to Soldiers Point Marina

I refer to Integrated Development Application (DA) 16-2015-586-1, relating to the proposed extension of Soldiers Point Marina, which has been forwarded to Roads and Maritime Services (Roads and Maritime) for navigational comment.

In 2012, the former DA 16-2012-57-1 was lodged by the proponent, and initially the application was not supported by Roads and Maritime due to a number of concerns. After a period of consultation and negotiation with the proponent, an agreement was reached that addressed these concerns.

In 2015, Roads and Maritime was requested to review and comment on the new DA, however the documents provided did not include electronic drawings for the proposal, and an accurate navigation assessment could not be undertaken without these documents. In late November 2015, these drawings were obtained and an assessment has now been carried out.

Roads and Maritime is generally supportive of the development of marinas, since such development increases and improves facilities for the boating public and assists in providing solutions to the challenges of boat storage around NSW. Roads and Maritime is cognisant there has been extensive commentary from stakeholders regarding the proposed extension of this marina.

It is understood Port Stephens Council considers that any new DA supersedes any previous DA along with any conditions associated. Therefore, if Council decides to approve the application then Roads and Maritime requests the following requirements are included as conditions of that approval, and that these requirements supersede all previous Roads and Maritime conditions.

1. A minimum channel width of 40 metres is to be maintained between the boundary of the oyster lease adjacent to Dowadee Island and the footprint of the marina. This minimum width is to ensure a safe navigation channel is provided for vessels transiting through the area. The decision to require a minimum width of 40 metres:
 - a. was based on the minimum distance needed for safe navigation adjacent to the oyster leases and farmers working these leases on their vessels
 - b. took into account all maritime environmental factors such as wind, waves and currents
 - c. included consideration of the number of vessels using the area, the type and size of these vessels, and expected changes in these patterns
 - d. included due regard to the depth of available water
 - e. took into account the likelihood of vessels berthing on the outer extremities of the marina arms, the impact these vessels could have on visibility between vessels in the outer channel and in marina fairways
 - f. is commensurate with the speed zone established in the area.

2. The proponent relinquishes all its existing leased commercial moorings and does not acquire any new commercial moorings in Soldiers Point in the future.
3. Any costs associated with the relocation of existing mooring holders or the installation of additional mooring apparatus or navigation aids is to be borne by the proponent.
4. Any marina structure, or vessel or object attached to the structure, including any rafted vessels or objects, is not to encroach nearer than 40 metres from the boundary of any part of the oyster lease area.
5. The proponent either constructs dinghy storage on the nearby shoreline, or designates one of the western berths specifically for berthing of tenders associated with private mooring licensees.

Roads and Maritime has established a designated 4 knot zone in this area to enhance navigation safety.

In May 2013, Roads and Maritime commissioned a study of the tidal flow in this area. This followed a study already undertaken by the proponent. Both studies have indicated there is a maximum current of approximately 1.6 knots in the marina precinct. Roads and Maritime is satisfied with the veracity of this result and considers this current will not impact on the safe navigation of vessels in the channel provided the conditions described above are required by Port Stephens Council and met by the proponent.

Roads and Maritime appreciates the opportunity to provide comment on the application. Should you require further information please contact me on 02 9563 8489.

Yours sincerely



3/2/16

David Hunter
General Manager
Boating Operations

ANNEXURE 7:
OFFICE OF THE ENVIRONMENT AND HERITAGE (OEH)



**Office of
Environment
& Heritage**

Your reference: 2015-586-1
Our reference: DOC15/439964-1
Contact: Steve Lewer, 4927 3158

Ms Amy Stone
Senior Development Planner
Port Stephens Council
PO Box 42
RAYMOND TERRACE NSW 2324

Dear Ms Stone

RE: ADEQUACY OF DIRECTOR GENERAL'S REQUIREMENTS FOR A SPECIES IMPACT STATEMENT FOR PROPOSED SOLDIERS POINT MARINA EXPANSION, SOLDIERS POINT, NSW (APPLICATION NO. 2015-586-1)

I refer to your email dated 30 October 2015 requesting the Office of Environment and Heritage (OEH) to provide comment on the adequacy of the Species Impact Statement (SIS). Director General's Requirements (DGRs) were issued to Mr Jeffrey d'Albora (Clippers Anchorage Pty Ltd) for the above development on the 5 August 2014.

OEH notes that it is the determining authority's (i.e. Port Stephens Council) responsibility to ensure that a draft or final SIS complies with the requirements issued by the Director General, prior to forwarding it to OEH for concurrence. Council would be aware that OEH has no regulatory or statutory role to review an SIS unless it is accompanied by a request as part of a concurrence application under the *Environmental Planning and Assessment Act 1979* (or a licence application under the *Threatened Species Conservation Act 1995*). However, in view of Council's preliminary determination that the SIS does not satisfy the issued DGR's, OEH has undertaken a brief review of the SIS and the comments provided by Council in its memorandum ('Natural Resource Assessment' for Soldiers Point Marina Expansion) and offers the following advice.

Based on this brief review OEH concurs with Council's preliminary assessment that the SIS does not satisfy the DGRs. Specifically OEH notes the following:

- OEH agrees with Council that in general there is insufficient information and assessment of threatened species matters such that the SIS does not adequately address the DGRs.
- OEH is of the opinion that the SIS fails to adequately address all threatened species and their habitat at the proposed development site, not taking appropriate consideration of known records of species and/or the likely impacts on such species. Specifically OEH notes:
 - Beach Stone Curlew – see below.
 - Pied and Sooty Oystercatchers – The SIS fails to recognise known breeding habitat for the Pied Oystercatcher (i.e. birds successfully bred on Dowardee Island during 2014-2015). The SIS underestimates the potential impacts of the proposed marina, namely its proximity to known habitat (i.e. the marina will be extended closer to the island), adverse impacts of erosion on potential breeding habitat and high-tide roosts through wave wash/wake (Note: OEH does not consider passive mitigation measures as a suitable offset for these potential impacts, such as

informing the public of the islands importance and enforcement of speed limits etc.), and potential increase in human activity / access to known habitat, which again cannot be adequately offset by passive measures.

- Marine Turtles – OEH disagrees that these animals have not been recorded in the vicinity of the proposal. OEH's 'Atlas of NSW Wildlife' database indicates that the Loggerhead Turtle have been recorded within 600 metres of the proposal, as such there is the potential for these animals to utilise the waters around the marina. Additionally, the impacts of boat-strike are underestimated and not adequately addressed in the SIS. OEH considers the addition of 58 berths represents a significant expansion of the marina (40 per cent increase in the number of berths) which would likely result in greater boating traffic associated with the marina and surrounds. OEH is of the opinion that this could ultimately lead to an increased risk of boat strike, and as such needs to be adequately addressed and appropriate mitigation measures and/or avoidance applied.
- Koala – has not been addressed in the 'Assessment of significance' (Appendix L) despite various records of the species either within the proposed development (i.e. car park areas to the south-east of the marina) and/or in close proximity (based on OEH 'Atlas of NSW Wildlife' database records). OEH acknowledges that the Koala is discussed in the body of the SIS, however, even when this document acknowledges potential adverse impacts (such as vehicle strike) it has not been included in the relevant assessment of significance. OEH would have expected its inclusion in the 'Assessment of Significance' based on known records at the site and potential adverse direct and indirect impacts.
- OEH concurs with Council's assertions that the overall impacts to the Beach Stone-curlew (*Esacus magnirostris*), which represents the 'key species' for which the SIS was required, and its habitat on Dowardee Island have been underestimated, are often contradictory and/or are based on poorly argued assumptions (*as outlined in Council's correspondence). OEH understands that Dowardee Island and Soldiers Point represents known breeding and foraging habitat for a breeding pair of birds, which have successfully bred over the last four seasons (since 2011; based on observations by Hunter Bird Observers Club (HBOC)), and is considered critical to the species long-term survival in the area. Although the specific breeding site on Dowardee Island is unknown (HBOC pers. comm.), the eastern sandy beach closest to the proposal is considered a potential site and does represent a high roost site for the species. Furthermore, this pair is considered the southern-most known breeding pair in Australia. As such, OEH considers any potential impacts to this area significant, and would have expected the SIS to have addressed these and ensured that any mitigation measures proposed guaranteed no adverse impacts in the long-term. The current SIS underestimates the impacts of increased boat traffic, potential beach erosion associated with wake, increased indirect impacts (such as light spill and noise), and potential increased human activity on the island. The SIS only offers passive mitigation measures that address changes to behaviour etc., rather than measures that avoid or mitigate against the impact.

Given that all Beach Stone-curlew in NSW constitute a single population (which is stated to be in the vicinity of 13 birds – as per the NSW Scientific Committee's Final Determination), OEH is of the opinion and concurs with Council, that this breeding pair are essential for the long-term viability of the species in the locality. As such any potential impact to this pair is considered significant and would be considered unacceptable, given its current 'critically endangered' status. OEH notes that the SIS fails to provide sufficient evidence that this pair will not be impacted upon by the proposal.

OEH specifically requested in the DGRs that the SIS would need to clearly demonstrate how the proposal would be modified to avoid impacts on key species, such as the Beach Stone-curlew, or how such impacts would be mitigated and/or the provision of appropriate offsets in instances where such impacts cannot be avoided or mitigated against. OEH is of the opinion that the SIS does not provide adequate measures to offset potential impacts to the Beach Stone-curlew nor has it offered any mechanisms that adequately avoid its habitat. Passive measures, such as enforcement of speed limits, public awareness campaigns (i.e. making the marina users more ecologically aware of the significance of Dowardee Island and surrounds), signage and implementation of an 'Environmental Policy' and 'Environmental Management System' to reduce the potential adverse operational impacts of the marina (e.g. pollution etc.), are not considered measures that will guarantee no adverse impacts to the species. As such, OEH does not

believe the SIS has adequately demonstrated that the Beach Stone-curlew will not be adversely impacted by the proposal.

Given the importance of this species and the significance of the nearby habitat, OEH would also have expected the proponent to engage a known 'specialist' who has demonstrated experience with the Beach Stone-curlew to determine likely impacts and to offer suitable mitigation measures.


- OEH supports Council's appraisal of the 'Section 5A Assessment of Significance' (Appendix L), in that it generally only provides a broad summary of the assessment and at times does not capture the full intent of the assessment criteria (as per examples given in Council's correspondence).
- OEH agrees with Council that the overall tone of the SIS is dismissive and generally underestimates the impacts of the proposal, to the extent, at times, it appears to mis-interpret the intent of the DGRs.
- OEH does not support the inclusion of anecdotal comments and/or personal observations made by marina staff / management as these are not considered reliable accounts. The veracity of these accounts cannot be verified / determined, as well as they would represent a 'conflict of interest'. OEH concurs with Council that many of these unsubstantiated accounts have been used in support of statements about infrequent use by subject species and/or the underestimating of potential impacts of the proposal.

In general, OEH concurs with Council's assessment of the SIS with respect to its adequacy in meeting the DGRs and as such recommends that it be returned to the consultant for additional assessment and/or correction. OEH suggest this may be facilitate with a 'face-to-face' meeting with the proponent and their consultant to relay both Council's and OEH's expectations of the document.

With respect to the 'Additional Information' requirements, due to the SIS being lodged after the initial 12 month period, OEH is of the opinion that the Gunninah correspondence (dated 26 October 2015) has adequately addressed the issues raised in OEH's correspondence (dated 6 October 2015). However, OEH notes that it is not the role of the consultant to dictate whether or not Council requires concurrence from OEH. It Council's responsibility as the consent authority to make this determination based on whether or not the proposal significantly impacts on threatened species matters.

If you require any further information regarding this matter please contact Steve Lewer, Regional Biodiversity Conservation Officer, on 4927 3158.

Yours sincerely



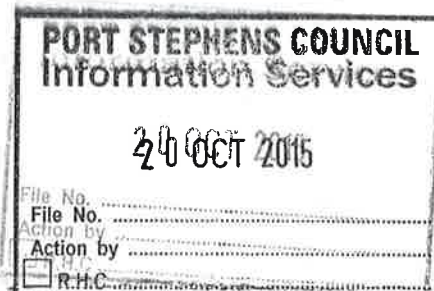
10 NOV 2015

RICHARD BATH
Senior Team Leader – Planning
Regional Operations

ANNEXURE 8:
OFFICE OF THE ENVIRONMENT AND HERITAGE (OEH)

Mr Wayne Wallis
General Manager
Port Stephens Council
PO Box 42
RAYMOND TERRACE 2324

Attention: Ms Amy Stone



Dear Mr Wallis

RE: INTEGRATED DEVELOPMENT APPLICATION NO. 16-2015-586-1, MARINA AND DEPOT – EXTENSION TO SOLDIERS POINT MARINA (ADDITIONAL 59 BERTHS), RELINQUISHMENT OF SEVEN SWING MOORINGS, LINE MARKINGS TO EXISTING CAR PARKING, AND DEPOT (CHANGE TO USE OF EXISTING INDUSTRIAL WAREHOUSE TO PROVIDE 33 VALET CAR PARKING SPACES OFF SITE).

I refer to your letter dated 21 September 2015, regarding the above proposed development application, seeking General Terms of Approval with respect to Aboriginal cultural heritage.

The Office of Environment and Heritage (OEH) has reviewed all the information supplied by Port Stephens Council as provided by the proponent. OEH is unable to provide General Terms of Approval for this proposal as there has been no Aboriginal cultural heritage assessment supplied for review. OEH notes that a minor comment in section 4.9.2 states the presence of two sites registered on the Aboriginal Heritage Information Management System (AHIMS).

The information supplied to OEH merely indicates that: *“Having regard for the above and the nature of the works proposed, it is not considered that any adverse impacts would result from this proposal. The Applicant would be willing to have imposed a condition of development consent to ensure that Sites AP1 A and B are suitable fenced during the construction period to ensure that there are no issues over that period”*. OEH considers this response both inaccurate and unacceptable.

The Soldiers Point area is a highly significant landscape to the Worimi people. The information supplied to OEH fails to mention that the entire adjoining headland is presently undergoing nomination with the NSW Minister for the Environment for gazettal as an Aboriginal Place. The nomination is due to its cultural and archaeological significance. Both sites referred to in the report form part of a much larger midden complex and are considered highly significant. OEH would consider any additional development within that precinct to be detrimental to both the cultural and archaeological significance of that locality.

Until a satisfactory Aboriginal cultural heritage assessment has been undertaken, including full consultation with the local Aboriginal community, OEH is unable to provide General Terms of Approval for Integrated Development Application No. 16-2015-586-1 with respect to Aboriginal cultural heritage.

Should you wish to further discuss any of the above matters, please contact Nicole Davis, Archaeologist Hunter Central Coast Region, on 4927 3156.

Yours sincerely

 15 OCT 2015

RICHARD BATH
Senior Team Leader Planning, Hunter Central Coast Region
Regional Operations

ANNEXURE 9:

NSW OFFICE OF WATER



Department of
Primary Industries
Water

Contact: Brendan Mee
Phone: 02 4904 2524
Email: brendan.mee@dpi.nsw.gov.au

The General Manager
Port Stephens Council
PO Box 42
Raymond Terrace NSW 2324

Our ref: 20 ERM2015/1060
Your Ref: 16-2015-586-1

Attention: Amy Stone

5 November 2015

Dear Ms Stone

Re: Integrated Development – 2 Sunset Boulevard & 2 Ridgeway Avenue, Soldiers Point and 324 Soldiers point Road, Salamander Bay – Extension to Soldiers Point Marina and depot

DPI Water (formerly the NSW Office of Water) has reviewed documents for the above development application and considers that, for the purposes of the *Water Management Act 2000* (WM Act), a controlled activity approval is not required and no further assessment by this agency is necessary for the following reasons.

- The proposed works occurring on waterfront land appear to be relatively minor and not likely to exceed minimal harm. Therefore DPI Water has deemed that no Controlled Activity Approval is necessary in this instance.

Should the proposed development be varied in any way that results in development extending onto land that is waterfront land, or encompassing works that are defined as controlled activities, then DPI Water should be notified.

Further information on controlled activity approvals under the WM Act can be obtained from DPI Water's website: www.water.nsw.gov.au go to *Water licensing > Approvals > Controlled activities*.

Please direct any questions regarding this correspondence to Brendan Mee, brendan.mee@dpi.nsw.gov.au.

Yours sincerely

Brendan Mee
Water Regulation Officer
Water Regulatory Operations, WR Operations South
NSW Department of Primary Industries - Water

PORT STEPHENS COUNCIL Information Services	
10 NOV 2015	
File No.	586/2015
Action by	
<input type="checkbox"/> R.H.C	