

# JOINT REGIONAL PLANNING PANEL

## (Southern Region)

### COUNCIL ASSESSMENT REPORT

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|------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Panel Reference</b>                                                 | <b>2011STH026</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>DA Number</b>                                                       | <b>2014.430</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>LGA</b>                                                             | <b>Bega Valley Shire Council</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Proposed Development</b>                                            | <b>Section 96(2) application seeking to modify Development Consent 2014.430 dated 1 December 2015 by way of changing the approved method of sewage collection and disposal from the approved marina.</b>                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Street Address</b>                                                  | <b>Cattle Bay Road Eden and waterway area of Cattle Bay</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Applicant/Owner</b>                                                 | <b>Eden Cattle Bay Marina Pty Ltd</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Date of DA lodgement</b>                                            | <b>21 August 2017</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Number of Submissions</b>                                           | <b>2 State Agency submissions</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Recommendation</b>                                                  | <b>Refusal</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Regional Development Criteria (Schedule 4A of the EP&amp;A Act)</b> | <b>Application to modify the marina approval pursuant to Section 96(2) of the Environmental Planning and Assessment Act 1979.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>List of all relevant s79C(1)(a) matters</b>                         | <ul style="list-style-type: none"> <li>• <b>State Environmental Planning Policy (State and Regional Development) 2011 – Part 4 Regional Development</b></li> <li>• <b>State Environmental Planning Policy 55 (Remediation of land) 1998 – Clause 7</b></li> <li>• <b>State Environmental Planning Policy 71 (Coastal protection) 2002 – Clauses 2 and 8</b></li> <li>• <b>Bega Valley Local Environmental Plan 2013 – Clauses 1.2, 2.3, 4.3, 5.5, 5.10, 6.3, 6.4 and 6.6</b></li> <li>• <b>Bega Valley Development Control Plan 2013 – Sections 5.5, 5.7, 5.8.1, 5.8.2 and 5.8.3</b></li> </ul> |
| <b>List all documents submitted with this report for the Panel's</b>   | <ul style="list-style-type: none"> <li>• <b>Modification Application</b></li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

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|---------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>consideration</b>      | <ul style="list-style-type: none"> <li>• Report prepared by Ocean Environmental entitled “Section 96 Application to Modify Development Consent No.2014.430 for Eden Cattle Bay Marina – Impact on Marine Ecology and Water Quality” dated 29 June 2017.</li> <li>• Report prepared by Royal Haskoning DHV entitled “Section 96 Application to Modify Development Consent No.2014.430 for Eden Cattle Bay Marina – Method of Sewage Disposal” dated 10 August 2017.</li> <li>• Report prepared by Andrew Wilson Town Planning Consultancy Service entitled “Section 96 Application to Modify Development Consent No.2014.430 for Eden Cattle Bay Marina” dated 11 August 2017.</li> </ul> |
| <b>Report prepared by</b> | <b>Robert Slapp Senior Planner</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Report date</b>        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

#### Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report? **Yes**

#### Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

#### Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Not Applicable**

#### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **Not Applicable**

*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

#### Conditions

Have draft conditions been provided to the applicant for comment? **Not Applicable**

*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report.*

**Note: The application seeking to modify the current Development Consent for the marina is not supported by Council Staff. The Grounds of Refusal are contained within Draft Notice of**

**Determination attached as Appendix 9 to this Report. The Draft Notice of Determination has not been provided to the applicant.**

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## ***APPENDICES***

Appendix 1 Development Consent 2014.430 dated 1 December 2015 as amended by the Land and Environment Court Notice of Orders made dated 10 November 2017.2)

Appendix 2 Copy of Deposited Plan DP1128056

Appendix 3 Copy of Section 96(2) Application to Modify

Appendix 4 Extracts from Council adopted Development Servicing Plan – Eden

Appendix 5 Extract from Bega Valley Development Control Plan 2013 – Section 5.7

Appendix 6 Copy of Council adopted Policy 3.03 On-site Sewage Management

Appendix 7 Copy of Council adopted Procedure 3.03.2 OSM Interpretations

Appendix 8 Copy of Environment Protection Authority Submission

Appendix 9 Copy of Department of primary Industry – Fisheries NSW Submission

Appendix 10 Draft Notice of Determination

# ASSESSMENT REPORT AND RECOMMENDATION

## **1.0 EXECUTIVE SUMMARY**

The Southern Joint Regional Planning Panel (SJRPP), on 1 December 2015 approved, subject to terms and conditions, the staged construction of a 154 berth marina, associated wave attenuator in the waters of Cattle Bay and ancillary temporary land based carparking, administration offices and amenities.

A Deferred Commencement Consent was issued by Council on the 22 December 2015.

Since the granting of the approval, the proponent has lodged 2 applications pursuant to Section 96(1A) of the Environmental Planning and Assessment Act 1979 seeking modifications to the Consent which have been assessed and determined by Council. As approved, the modifications effectively revolved around minor changes to the Consent conditions to give certainty in the activation of the marina approval.

The Section 96(2) application was lodged with Council on 21 August 2017 and seeks to change the method of sewage collection and disposal from the approved marina development and relevant modifications to specific conditions within the existing Consent to facilitate the change.

It should be noted that the Section 96(2) application is subject to a Class 1 Appeal against the deemed refusal of the application.

As originally approved, sewage would be removed from the holding tanks of vessels by mobile sewage pump out carts and discharged to Council's reticulated sewer system via an on-site connection point and service conduit.

As now proposed, the modified method of sewage disposal would involve the installation of bunded on-site holding tanks for collection and storage of sewage. The holding tank would be serviced by a commercial waste management contractor with disposal of sewage to Council's Merimbula sewage treatment facility by truck.

Further the application if approved would result in the current condition requiring Section 64 headwork contributions pursuant to the provisions of the Local Government Act 1993 and Water Management Act 2000 being deleted.

The application was subject to an internal and external referral process involving the Department of Primary Industries - Fisheries NSW, the Environment Protection Authority and Council Staff.

As the current application to modify the Consent has been lodged pursuant to Section 96(2) of the Environmental Planning and Assessment Act 1979, the Southern Joint Regional Planning Panel is the determining authority.

The application was not subject to public notification on the basis that the scope of the proposed modifications sought, relate to engineering matters of a technical nature.

The proposed modification has been assessed against the relevant matters for consideration pursuant to Section 79C of the Environmental Planning and Assessment Act 1979. The relevant matters of consideration are as follows together with a summary of observations and recommendations.

- State Environmental Planning Policy (State and Regional Development) 2011 – Part 4 Regional Development. The Southern Joint Regional Planning Panel has been recognised as the Determining Authority in this instance.
- State Environmental Planning Policy 55 (Remediation of land) 1998 – Clause 7. The proposed modification would not be inconsistent with the Policy. Conditions within the existing Consent will adequately respond to known site contamination issues.
- State Environmental Planning Policy 71 (Coastal protection) 2002 – Clauses 2 and 8. The proposed changes in sewage collection and disposal pose unacceptable and avoidable public health and environmental risks and as such, would be contrary to the provisions of the SEPP as relevant and as discussed in this Report.
- Bega Valley Local Environmental Plan 2013 – Clauses 1.2, 2.3, 4.3, 5.5, 5.10, 6.3, 6.4 and 6.6. The proposed changes in sewage collection and disposal pose unacceptable and avoidable public health and environmental risks and as such, would be contrary to the provisions of the Plan as relevant and as discussed in this Report.
- Bega Valley Development Control Plan 2013 – Sections 5.5, 5.7, 5.8.1, 5.8.2 and 5.8.3. The proposed changes in sewage collection and disposal pose unacceptable and avoidable public health and environmental risks and as such, would be contrary to the provisions of the Plan as relevant and as discussed in this Report.

Additional consideration has been given to specific sections of the following Acts which have relevance given the circumstances of the case:

- Environmental Protection and Biodiversity Conservation Act 1999
- Threatened Species Conservation Act 1995
- Local Government Act 1993
- Water Management Act 2000

On assessment, the proposed changes would result in unacceptable and avoidable risk to public health and environmental risk to the waters of Twofold Bay and the environmentally sensitive transport corridors between the approved marina and the Merimbula sewerage treatment plant.

Whilst mitigation measures could be introduced to limit potential environmental impacts, there are no justified or sustainable grounds which would reasonably support the adoption of an alternate sewage treatment system which would be superior to direct connection to Council's reticulated sewer system.

Based on the assessment detailed in this report, the proposed modifications to Conditions 1, 54, 74, 80, 83(b) and 85(a) of the Consent are not supported. The recommended grounds of refusal are provided in the Draft Notice of Determination attached to this Report as Appendix 10.

## **2.0 INTRODUCTION**

The Southern Joint Regional Planning Panel (SJRPP), on 1 December 2015 approved, subject to terms and conditions, the staged construction of a 154 berth marina, associated wave attenuator in the waters of Cattle Bay and ancillary temporary land based carparking, administration offices and amenities.

A Deferred Commencement Consent was issued by Council on the 22 December 2015. A copy of the Consent is attached in Appendix 1 to this Report.

The Section 96(2) application proposes changes to the method of sewage disposal from the approved marina development and relevant modifications to specific conditions within the existing Consent to facilitate the change.

As now proposed, the modified method of sewage disposal would involve the installation of bunded on-site holding tanks for collection and storage of sewage. The holding tank would be serviced by a commercial waste management contractor with disposal of sewage to Council's Merimbula sewage treatment facility by truck.

A similar on-site sewage management proposal formed part of an application seeking to modify the original development approval pursuant to Section 96(1A) of the Environmental Planning and Assessment Act 1979. The application was lodged with Council on 5 May 2016 and was considered by Council at its meeting dated 14 December 2016. In determining that component of the modification, Council was not supportive of the proposal on the basis that:

- The proposed marina development is located within a development servicing area nominated in Council's adopted development servicing Plan – Sewerage Services dated 12 June 2013.
- A sewer connection is available to the land.
- Such a system would have associated human health, amenity and environmental risks.

The current application has been assessed in accordance with the Environmental Planning and Assessment Act 1979 and relevant legislation and Council adopted Policy.

### 3.0 DESCRIPTION OF THE SITE AND OWNERSHIP

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



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

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



*Site Plan – Source: Environmental Impact Statement Royal Haskoning DHV August 2014*

The site comprises a land based component and an area within Cattle Bay surrounding and encompassing the existing wharf structure.

The land component comprises Lot 2 and part Lot 4 DP1138056. Lot 2 is owned by the applicant. Lot 4 has been dedicated in subdivision as public reserve and is vested in Council's ownership.

A copy of the deposited plan is attached in Appendix 2 to this Report.

## **4.0 DESCRIPTION OF PROPOSAL**

As originally approved, sewage would be removed from the holding tanks of vessels by mobile sewage pump out carts and discharged to Council's reticulated sewer system via an on-site connection point and service conduit. The associated land based temporary management accommodation and amenities would discharge directly to Council's reticulated sewer system.

As now proposed, the new method of sewage disposal would involve the installation of bunded, on-site holding tanks for collection and servicing by a commercial waste management contractor and disposal to a Council off-site sewage treatment facility.

In detail, the proposal involves the installation of two above ground holding tanks comprising a septic tank having a capacity of 4000 litres and a collection well having a capacity of 7000 litres.

The tanks would be located immediately adjacent the northern end of the approved temporary marina buildings to ensure ready access by the mobile sewage pump out carts and commercial waste road tankers.

The area would be located approximately 50m from the Cattle Bay waterway. The area would be suitably screened from view and secured by lockable gates.

In operation, the mobile pump-out carts would be coupled to the septic tank during the discharge operation. The carts are fitted with a range of safety features to help protect against the risk of spillage.

Sewage would be directly discharged to the septic tank. Solid materials would settle to form a sludge, while the lighter fraction would float to the surface to form a scum layer. The liquid component (effluent) would flow to the adjacent separate collection well.

The septic tank would be routinely cleaned out every two to three years but checked regularly to ensure operational effectiveness. The effluent in the collection well would be pumped out every week, or on an as need basis given the rate of waste generation which would be seasonal.

### **4.1 ENVIRONMENTAL IMPACTS**

In support of the proposed modification, the applicant maintains that the environmental impact considerations of relevance to the proposed modification relate to water quality, aquatic ecology, odour and visual amenity.

#### **4.1.1 WATER QUALITY AND AQUATIC IMPACTS**

The current application is supported by a Statement on Marine Ecology and Water Quality prepared by Ocean Environmental Consulting. The Statement finds that the now proposed method of collection and disposal will have no additional impact on aquatic ecology or water quality in Twofold Bay.

The Statement also acknowledges that there will be a potential increased environmental risk resulting from accidental spillage or leakage of sewage during transfer from mobile pump-out carts to holding tanks or from the holding tanks to trucks, or due to leaks/breakages in the holding tanks.

In response, a number of recommendations are documented in the Statement to mitigate potential environmental risk. Those being:

- Holding tanks should be located well away from Cattle Bay Beach and waterway, over a non-permeable surface area to prevent uncontrolled/unregulated discharge entering the water table or runoff into the waterway. It being noted that the proposed holding tanks would be located over existing concrete slabs which are considered suitable.
- Holding tanks should be fully bunded, at a level high enough to contain any uncontrolled/unregulated discharge to prevent runoff of sewage into the waterway. Conduits used to transfer sewage between the mobile pump-out carts and the holding tanks and from the holding tanks to trucks should be designed to be able to pass over the bunded area.
- All staff undertaking sewage transfer operations should be fully trained and aware of the risk of spills on the local water quality and aquatic ecology.
- Emergency Procedures and a Pollution Incident Response Management Plan for any uncontrolled/unregulated discharge (including a list of suitable local emergency contacts) should be put in place and all staff made aware of them. Copies of these documents should be located at the storage site and in the administration office.
- Emergency spill response kits should be kept on-site.

#### **4.1.2 ODOUR**

The applicant has advised that the temporary on-site holding tanks, commercial waste collection tankers and the approved mobile sewage pump out carts are all sealed and accommodate sealed transfer of sewage with minimal generation of odour.

#### **4.1.3 VISUAL AMENITY**

The applicant has advised that the visual amenity of the site and locality will not be impacted as the temporary holding tanks are small in scale, would be located 50 metres from Cattle Bay Beach and would be suitably screened and integrated into the design of the approved marina amenities and administration building.

#### **4.1.4 SUITABILITY OF THE SITE**

The applicant maintains that the site is suitable to support the now proposed method of sewage collection and disposal on the basis that:

- the changes to the method of sewage disposal are warranted given the unique circumstances of the site and the development strategy associated with the

staging of the marina in context with the mixed use tourist and residential component.

- the approved land based component of the marina and the proposed sewage holding tanks are temporary facilities until the tourist facility is developed on the land. The marina development is the first stage and the catalyst for future development at Cattle Bay.
- the land based component of the marina development is a former industrial site covered by concrete slabs and blocked sewer pipes. The site conditions together with the amount of sewer connection headworks charges for the marina present excessive upfront costs in this initial stage to the development which undermine its viability and would in any case be made redundant by the future tourist development.

## **4.2 PROPOSED MODIFICATIONS TO CONSENT**

The applicant seeks to modify specific Conditions in the Consent to facilitate the now proposed changes to the approved method of sewage collection and disposal. The proposed modifications sought are detailed as follows:

### **4.2.1 Condition 1 – Approved Plans and Supporting Documentation**

The Condition specifies the documentation on which Council and the Southern Joint Regional Planning Panel based their assessment and determination of the original development application for the marina development. The Condition reads:

- “1. Development shall take place in accordance with the Approved Development Plan, the application form and any supporting documentation received with the application, except as may be amended by the following conditions.*

*The plans and supporting documentation for the purpose of this condition are:*

- a. Environmental Impact Statement Proposed Marina and Temporary Land Facilities Cattle Bay Road Eden Royal inclusive Appendices number 1 to 20 Haskoning DHV and Inspire Urban design and Planning 4 August 2014.*
- b. Cattle Bay Marina Response to Agency Submissions Relating to Aquatic Ecology Ocean Environmental Consulting 30 March 2015.*
- c. Cattle Bay Marina Operational Environmental Management Plan Royal Haskoning DHV and Advanced Marina Management Pty Ltd March 2015.*
- d. Cattle Bay Marina Construction Environmental Management Plan Royal Haskoning DHV April 2015.*
- e. Cattle Bay Marina Response to Submissions on EIS Geotechnical Investigations Royal Haskoning DHV April 2015.*
- f. Cattle Bay Marina Operational Noise Management Plan at Cattle Bay Road Eden West and Associates Pty Ltd 7 April 2015.*

- g. *Cattle Bay Marina Construction Noise Management Plan at Cattle Bay Road Eden West and Associates Pty Ltd 7 April 2015.*
- h. *Cattle Bay Marina Response to Submissions on EIS Supplementary Statement on Wave Attenuator and Potential Impacts Royal Haskoning DHV 8 April 2015*
- i. *Cattle Bay Marina Response to Submissions on EIS Refurbishment and Maintenance Works for the Existing Jetty Royal Haskoning DHV 8 April 2015.*
- j. *Response to Submissions Development Application No.2014.430 For Cattle Bay Marina Andrew Wilson Town Planning Consultancy Service 10 April 2015.*
- k. *Supplementary Report Cattle Bay Marina – Acoustic Services – Wave Attenuator Noise West and Associates Pty Ltd 3 June 2015.*
- l. *Cattle Bay Marina Water Quality Management Plan Version #2 Ocean Environmental Consulting 23 June 2015.*
- m. *Supplementary Report Cattle Bay Marina Response to Agency Submissions relating to Aquatic Ecology #2 Ocean Environmental Consulting 30 June 2015.*
- n. *Development Application No. 2014.430 For Eden Cattle Bay Marina – Response to Second Round of Submissions Andrew Wilson Town Planning Consultancy services 9 July 2015.*
- o. *Modified Plans – Proposed Cattle Bay Marina and Wave Attenuator Detail General Arrangement Stages 1 and 2 Plan reference 8A0458/MA/SK 10 and SK 11 Royal Haskoning DHV 7 August 2015.*
- p. *Cattle Bay Marina Development Application Acoustic Report at Cattle Bay Road Eden West and Associates Pty Ltd Issue E 13 October 2015.*
- q. *Cattle Bay Marina Development Application Air Quality Report at Cattle Bay Road Eden West and Associates Pty Ltd Issue C 14 October 2015.*

*Reason: To ensure that the proposed development is undertaken in accordance with the above documentation and the conditions imposed in this Consent."*

The current application is supported by 2 specialist consultant reports. The applicant is seeking a modification to the Condition by inserting these 2 reports into the document list after item (q). The new items would read:

*"(r) Statement titled Section 96 Application to modify Development Consent No.2014.430 for Eden Cattle Bay Marina – Method of Sewage disposal prepared by Royal Haskoning DHV dated 10 August 2017."*

*"(s) Statement titled Section 96 Application to modify Development Consent No.2014.430 for Eden Cattle Bay Marina – Impact on Marine Ecology and Water Quality prepared by Ocean Environmental Consulting dated 29 July 2017."*

#### **4.2.2 Condition 74 – Easements**

The Condition requires the establishment of suitable easements to provide connection to Council's reticulated water supply and sewerage systems and local

electricity services (easements for services) over Council's foreshore reserve (Lot 4 DP 1138056). The Condition reads:

*"74. Establishment of easements for services as necessary to provide for the connection of water supply, sewerage and electricity services over Lot 4 DP 1138056 to service the proposed marina berths. A copy of the plan registered by the NSW Land Titles Office creating this easement shall be provided to the Council to demonstrate compliance with this requirement.*

*Reason: to secure the authority for land benefited to install, use and maintain connections to utility services across other land."*

The applicant is seeking a modification to the Condition deleting reference to "sewerage". As proposed, the Condition would read:

*"74. Establishment of easements for services as necessary to provide for the connection of water supply, and electricity services over Lot 4 DP 1138056 to service the proposed marina berths. A copy of the plan registered by the NSW Land Titles Office creating this easement shall be provided to the Council to demonstrate compliance with this requirement.*

*Reason: to secure the authority for land benefited to install, use and maintain connections to utility services across other land."*

#### **4.2.3 Condition 80 – Utility Services**

The Condition requires the applicant to apply for and obtain a Certificate of Compliance under the Water Management Act 2000 based on the generated demand by the approved marina development for both water and sewage. The Condition reads:

*"80. A Certificate of Compliance under Division 5 of Part 2 of Chapter 6 of the Water Management Act 2000 must be obtained prior to the issue of a Construction Certificate.*

*Note: The development has been assessed as imposing an additional load of 59.4ET to the water supply system and 59.4ET to the sewerage network. The payment due will be calculated at the rate specified in Council's adopted Fees and Charges at the time of payment.*

*Reason: To ensure that an equitable monetary contribution is payable for the provision of water supply and sewerage treatment infrastructure required to meet the loadings generated by this development."*

The applicant is seeking a modification to the Condition by inserting a reference to water supply and deleting reference to sewerage treatment. As proposed the Condition would read:

*"80. A Certificate of Compliance for water supply under Division 5 of Part 2 of Chapter 6 of the Water Management Act 2000 must be obtained prior to the issue of a Construction Certificate.*

*Note: The development has been assessed as imposing an additional load of 59.4ET to the water supply. The payment due will be calculated at the rate specified in Council's adopted Fees and Charges at the time of payment.*

*Reason: To ensure that an equitable monetary contribution is payable for the provision of water supply infrastructure required to meet the loadings generated by this development."*

#### **4.2.4 Condition 54, 83, 84(b) and 85(a) – Design and Approval of Direct Connection to Council's Sewer System**

These Conditions relate to the need to submit detailed design plans to Council for endorsement for direct connection to Council's sewer network (Conditions 83, 84(b) and 85(A)) and the need to ensure equitable and compliant access for people with a disability to all elements of the approved marina development. The Conditions read:

*"54. The final construction plans shall demonstrate compliance for the access of people with disabilities and must be provided in accordance with the requirements of the Building Code of Australia, AS 1428.1, AS3962 and with regard to the Disability Discrimination Act 1992 - Access to Premises Standards 2010. These plans shall be submitted to Council for concurrence prior to the release of any construction certificate."*

*"83. Detailed design of a dockside waste water pump out point, or an on-land connection point to the local sewerage system for a mobile waste water pump out unit shall be submitted to, and approved by Council.*

*Any on-land connection point for a mobile waste water pump out unit shall be contained entirely within the development, and may not encroach onto road reserve or public land. This connection point shall include:*

- a) Physical measures for the prevention of spills*
- b) Provision for wash down / cleaning of the mobile unit within a bunded area*
- c) Provision of a sampling point for the quality of discharge to Council sewer*
- d) Measures for the prevention of odour*
- e) Physical measures to exclude unauthorised public access*
- f) Ongoing maintenance and ownership of this connection point will remain the responsibility of the marina owner/operator.*

*Reason: To ensure the provision of a sanitary method of disposal of waste water from vessels moored at the marina facility."*

*"84. Conditions to be satisfied prior to Engineering Construction Certificate (approval under Section 138 of the Roads Act and Section 68 of the Local Government Act).*

*The following matters shall be completed prior to the endorsement of a Construction Certificate for any part of this development:*

- b. It appears that this proposed development may be located below Council's sewerage system. The applicant is to provide an internal sewer drainage diagram and a concept reticulated sewerage design which verifies that the proposed development can adequately drain to the Council's reticulated sewer.*

*Reason: To ensure that the development can drain to Council's reticulated sewer system"*

*“85. Conditions to be satisfied prior to occupation subject to Council acceptance.*

*The following matters shall be completed prior to the occupation of any part of this development:*

*These works shall be designed and constructed in conformity with Council’s Technical Specifications (or other documents formally adopted by Council for the purpose of specifying standards for construction works) as current at the date of the approval of construction plans, and sound engineering practice:*

*One or more Compliance Certificates must evidence the satisfactory completion of these works. See below.*

*a. Extension of Sewer*

*Council’s existing reticulated sewerage shall be extended by at least 1m past the boundary of Cattle Bay Road and Lot 2 DP 1138056, and shall terminate at a manhole. This manhole shall form the junction between Councils reticulated sewer, and the service line to the marina development.*

*Detailed design of all sewerage works to service this development shall be in accordance with Council’s Development Design Specification D12 and all plans and specifications for proposed sewerage works are to be submitted to, and approved by Council.*

*Construction shall be carried out by a Bega Valley Shire Council accredited contractor(s) and in accordance with Council’s Development Construction Specification C402 – Sewerage System.*

*Reason: to ensure all waste discharge is managed within the development boundary, and to provide a clearly delineated separation between private and public sewer”*

As proposed, the applicant is seeking a deletion of the Conditions.

#### **4.2.5 Schedule of Contributions, Fees and Charges.**

As an attachment to the Consent, Council has provided the applicant with a schedule of contributions, fees and charges for payment in association with the approved marina development. The schedule is designed to provide payment advice such as, dollar value and allocation numbers for receipting purposes. It has no statutory weight.

The applicant is seeking a modification to the schedule deleting all reference to sewage charges.

A copy of the application, inclusive of the supporting technical reports, is attached in Appendix 3 to this Report

## **5.0 STATUTORY PLANNING AND ASSESSMENT**

The form and content of the original development application for the marina development and the reporting process was most comprehensive and addressed potential impacts on the natural and built environments of Cattle Bay, the broader waterway area of Twofold Bay and surrounding lands.

The reporting and determination process resulted in the issue of a conditional development consent.

The scope of the now proposed modification would not warrant a total review of the statutory assessment process. The following matters are those considered integral to the assessment and the appropriateness of the current modifications being sought.

### **5.1 Environment Protection and Biodiversity Conservation Act 1999**

The provisions of the Act were taken into account in the preparation, assessment and the determination of the original development application for the marina development.

The Objectives of the Act are detailed in Section 3

The relevant Objectives of the Act are:

- “1(a) to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; and*
- 1(b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and*
- 1(c) to promote the conservation of biodiversity;”*

The original application for the approved marina development was supported by a number of specialist reports. Collectively, the reports acknowledged that the oceanic nature of Twofold Bay provides habitat opportunities for some 63 listed species (including 26 threatened species) identified under the Biodiversity Conservation Act 1999, NSW Threatened Species Conservation Act 1995 and NSW Fisheries Management Act 1994.

In the determination of the application at the time it was Council’s position, and that of the SJRPP, that provided appropriate mitigation measures were enacted through the preparation, endorsement and implementation of a Construction Environmental Management Plan and Operational Environmental Management Plan, impact on biodiversity was manageable.

One of the critical considerations at the time was that sewage would be collected and directly discharged to an on-site sewer connection point to Council’s satisfaction thus limiting exposure to unacceptable and avoidable environmental and public health risks brought about by accidental spillage, plant malfunction or failure.

Whilst suitably worded conditions could be imposed in the body of the Consent to reflect the recommendations contained within the Statement prepared by Ocean Environmental Consulting, the change in the method of collection and disposal of

sewage from the approved marina pose unacceptable and avoidable environmental risks to the foreshore and waterway areas of Twofold Bay.

Furthermore, it is to be noted that the application does not address the potential environmental and public health risks associated with the transport of sewage between the site and Council's Merimbula sewerage treatment plant.

It is important to note that the road transport route between the approved marina and Merimbula treatment plant is skirted by environmentally sensitive corridors (Yowaka River, Pambula River, Pambula Lake and Merimbula Lake) which would be exposed to and susceptible to environmental degradation and public health risks in the event of a pollution incident stemming from a road accident and/or plant malfunction or failure on route.

These water bodies are prescribed Priority Oyster Aquaculture Areas in which harvesting standards are prescribed under the NSW Shellfish Program which is administered by the NSW Food Authority. Accordingly, environmental integrity and water quality is paramount in these waterways and as such, the method of collection and disposal of sewage by road transport is not sustainable given the circumstances of the case.

Accordingly, the change in the method of collection and disposal of sewage from the approved marina would be contrary to the Aims of the Act and as such, is not supported.

## **5.2 Threatened Species Conservation Act 1995**

The provisions of the Act were taken into account in the preparation, assessment and the determination of the original development application for the marina development. This was deemed necessary on the basis that the both the land and water based components of the marina development supported or had the potential to support environmentally rich habitat opportunities for a number of threatened species.

The Objectives of the Act are detailed in Section 3.

The Objectives of the Act are:

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

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

In the determination of the application at the time it was Council’s position, and that of the SJRPP, that provided appropriate mitigation measures were enacted through the preparation, endorsement and implementation of a Construction Environmental Management Plan and Operational Environmental Management Plan, the Objectives of the Act would be met.

As discussed in Section 5.1 above, suitably worded conditions could be imposed in the body of the Consent to address potential risk. However, it is considered that the change in the method of collection and disposal of sewage from the approved marina pose unacceptable and avoidable environmental risks which would be contrary to the Objectives of the Act.

Accordingly, the change in the method of collection and disposal of sewage from the approved marina is not supported by Council.

Note: Recent changes to State biodiversity legislation have seen the repeal of the Act. However, as the current application was lodged with Council on 21 August 2017 being prior to the prescription of the new legislation (25 August 2017), the provisions of the Act have relevance in the assessment and determination of the application.

### **5.3 Local Government Act 1993**

#### **Section 64 – Construction of works for developers**

Section 64 of the Act states:

“Division 5 of Part 2 of Chapter 6 of the Water Management Act 2000 applies to a Council exercising its functions under this division in the same way as it applies to a water supply authority exercising its function under this Act.”

The provision has relevance in Council exercising its functions under the Water Management Act 2000 and in the imposition of Condition 80 in the Consent.

#### **Section 124 - Orders**

Section 124 of the Local Government Act 1993 (Order 24) includes provisions to order a connection to sewer where there is an available service.

The development is within Councils adopted Development Servicing Plan – Sewerage Services for Eden and therefore, like any other development, should be connect to the reticulation network.

Reticulated sewerage services provide significant public health and environmental benefits compared to on-site sewage management. These benefits are well documented and apply to the community served, visitors and the surrounding areas.

Allowing optional connection (as proposed) would erode the benefits and also increase the financial burden on the contributing rate payers. Sewerage service provision requires long term planning and investment to ensure that the capacity within the system adequately meets the current and future needs of the community reliably.

It is important that all properties are connected to the sewer to effectively deliver high standards of public health and environmental outcomes. The Cattle Bay Marina development is located in a sensitive coastal location in which environmental and public health considerations are paramount.

Accordingly, it is considered that direct on-site connection to Council's sewerage reticulated system provides a far superior method of collection and disposal to that as now proposed by the applicant. Therefore, the current application is not supported by Council.

An extract from Council's adopted Development Servicing Plan – Sewerage Services for Eden, is attached in Appendix 4 to this Report.

#### **5.4 Water Management Act 2000 - Authority may impose certain requirements**

Section 306(2) of the Act states:

*“As a precondition to granting a certificate of compliance for development, a water authority may, by notice in writing served on the applicant, require the applicant to do either or both of the following:*

- (a) to pay a specified amount to the water supply authority by way of a contribution towards the cost of such water management works as are specified in the notice, being existing works or projected works, or both,*
- (b) to construct water management works to serve the development.”*

As part of the reporting and determination of the original development application for the marina Council, together with the SJRPP, considered it appropriate to levy a contribution pursuant to the provisions of the Local Government Act 1993 and the Water Management Act 2000.

The decision to levy a contribution was based on the likely generated demand the proposed marina would have on Council's reticulated water and sewerage services. Accordingly, a suitable Condition (Condition 80) was imposed on the Consent.

The current application to modify the approval seeks to modify Condition 80 deleting all reference to Council's sewerage network. If approved, this would effectively remove the need to pay a contribution towards the provision of sewerage services to the marina. Therefore, the current application is not supported by Council.

Further comment on this issue is made in Section 5.5.4 of this Report.

## **5.5 Environmental Planning and Assessment Act 1979.**

### **5.5.1 Section 96(2) – Substantially the Same Development**

The current application was lodged pursuant to Section 96(2) of the Act.

The provisions of the Act enable Council to modify a consent provided that it is satisfied that the development to which the modified consent relates is substantially the same development for which the consent was originally granted.

It is generally applied to circumstances where the modification sought may have more than a minimal environmental impact.

On review, Council is satisfied that the application of Section 96(2) is appropriate in this instance given the circumstances of the case. Whilst there would be no significant change in land use activity, staging and marina configuration/berth numbers, the now proposed changes in sewage collection and disposal would have associated environmental and public health risks.

### **5.5.2 Section 96(3) – Matters for Consideration**

The provision, in application, requires Council to consider in the determination of an application seeking to modify a consent, matters as relevant and referred to in Section 79C(1) of the Act.

### **5.5.3 Section 79C(1) Evaluation.**

The provision, in application, requires Council to consider specific matters in the determination of a development application. The relevant provisions are:

- “(a) *the provisions of:*
- (i) *any environmental planning instrument, and*
  - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved),*
  - (iii) *any development control plan, and*
  - (v) *any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.”*

### **5.5.3.1 Section 79C(1)(a)(i) – the provisions of any environmental planning instrument**

#### **State Environmental Planning Policies**

##### **State Environmental Planning Policy (State and Regional Development) 2011**

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

In accordance with the provisions (Part 4 Regional Development) of the SEPP, the Southern Joint Regional Planning Panel is the determining authority for the current application to modify the marina approval pursuant to Section 96(2) of the Environmental Planning and Assessment Act 1979.

##### **State Environmental Planning Policy 55 (Remediation of Land) 1998**

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

Clause 7 states;

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

The original reporting on and the assessment of the approved marina development identified that its land based component had areas of site contamination and that appropriate site rehabilitation would be necessary in accordance with the recommendations contained within the documented reporting.

In response, appropriate conditions (Conditions 30 and 31) were imposed in the Development Consent.

If approved, the now proposed changes to the method of collection and disposal of sewage would not require a modification to the specific wording of the Consent.

##### **State Environmental Planning Policy 71 (Coastal Protection) 2002**

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

| Standard                                                                                                                | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Clause 2 - Aims of Policy</b>                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| (a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and | <p>The approved marina development would be located immediately adjacent to the Cattle Bay foreshore being within the marine environs of Twofold Bay.</p> <ul style="list-style-type: none"> <li>• The proposed changes would result in unacceptable and avoidable risk to public health and environmental risk to the waters of Twofold Bay and the environmentally sensitive transport corridors between the approved marina and the Merimbula sewerage treatment plant.</li> <li>• The proposed changes would have no impact on cultural heritage. Suitable conditions have been imposed in the Development Consent for the marina which will adequately address any issues that arise in the final design stages to the development.</li> <li>• The siting and design of the proposed holding tanks would have no direct impact on established recreational opportunities offered by the approved marina development or that of the immediate foreshores of Cattle Bay, the greater foreshore and waterway areas of Twofold Bay or those referenced waterways along the transport route. However, it has to be acknowledged that any pollution incident stemming from operational failure of the proposed system may have significant impacts on the enjoyment of passive and active recreational opportunities offered by the abovementioned foreshore and waterway areas.</li> </ul> |

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|                                                                                                                                                                                          | <ul style="list-style-type: none"> <li>• Whilst the approved marina development would contribute to the economic fabric of the Shire over both the short and long term. Allowing optional connection to Council's sewerage infrastructure would increase the financial burden on the contributing rate payers within the Shire.</li> </ul> <p>The proposed changes would result in a reduction in the payment of Section 64 Headwork Contributions levied pursuant to the Water Management Act 2000 to the benefit of the applicant but at the expense of the greater community.</p> <p>See Section 5.5.4 of this Report</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>(b) to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and</p> | <p>The land component comprises Lots 2 and part Lot 4 DP 1138056. Lot 4 has been dedicated in subdivision as public reserve and is vested in Council's ownership. The dedication of the public reserve originated from the Major Project Concept Approval (05_0032).</p> <p>As part of the approved marina development, a 6 metre wide easement for access and services is proposed over the reserve.</p> <p>The siting and design of the proposed holding tanks would not impede the function of the easement or preclude or restrict public access to the approved marina or the immediately adjoining foreshore areas of Cattle Bay.</p> <p>However, it has to be acknowledged that the proposed changes in the method of collection and disposal of sewage have potential environmental and public health risks which, in the event of a pollution incident, may limit or restrict direct access to the waters of Cattle Bay and the greater waterway and foreshore areas of Twofold Bay and the environmentally sensitive transport corridors between the approved marina and the Merimbula sewerage treatment plant.</p> |

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| (c) to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and | As above                                                                                                                                                                                                                                                                                                                                                                                                                          |
| (d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and                                                                           | <p>Potential impacts of the marina development on Aboriginal culture and heritage were considered as part of the assessment and determination process associated with the original development application.</p> <p>The now proposed method of collection and disposal of sewage would have no greater impact than that initially considered.</p>                                                                                  |
| (e) to ensure that the visual amenity of the coast is protected, and                                                                                                                                               | <p>The proposed holding tanks would be small and in context with the scale of the approved temporary administration and amenities buildings. The tanks would be suitably screened and located 50m from the foreshore.</p> <p>Their siting and design would not significantly impact on the visual amenity of adjoining residential areas or the immediate foreshore areas of Cattle Bay or the marine environment in general.</p> |
| (f) to protect and preserve beach environments and beach amenity, and                                                                                                                                              | <p>The siting and design of the proposed holding tanks would not impact on the beach environment and amenity. However, it has to be acknowledged that the proposed changes in the method of collection and disposal of sewage would have potential environmental and public health risks which, in the event of a pollution incident, may adversely impact on the Cattle Bay beach environment and amenity.</p>                   |
| (g) to protect and preserve native coastal vegetation, and                                                                                                                                                         | <p>The proposed changes in the method of collection of disposal of sewage would not require the removal of coastal vegetation.</p>                                                                                                                                                                                                                                                                                                |
| (h) to protect and preserve the marine environment of New South Wales, and                                                                                                                                         | <p>The siting and design of the proposed holding tanks would have no direct impact on the marine environment. However, it has to be acknowledged that any pollution incident stemming from operational failure of the</p>                                                                                                                                                                                                         |

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|                                                                                                                                                                                                                  | proposed system may have significant impacts on the marine environment.                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| (i) to protect and preserve rock platforms, and                                                                                                                                                                  | <p>Cattle Bay comprises a protected sandy beach contained between rocky headlands.</p> <p>A main component of Cattle Bay's aquatic habitat comprises intertidal rocky shores and shallow to deep rock reefs or boulder reefs.</p> <p>The siting and design of the proposed holding tanks would have no direct impact on the marine environment. However, it has to be acknowledged that any pollution incident stemming from operational failure of the proposed system may have significant impacts on the marine environment.</p> |
| (j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of Section 6 (2) of the Protection of the Environment Administration Act 1991), and | <p>The siting and design of the proposed holding tanks would not be inconsistent with the ESD Principles.</p> <p>However, it has to be acknowledged that any pollution incident stemming from operational failure of the proposed system would have significant environmental and public health risks and as such, ESD Principles have relevance and must be applied in considering and determining the current application.</p> <p>See Section 5.5.3.2 of this Report.</p>                                                         |
| (k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and                               | The siting and design of the holding tanks would not compromise the natural scenic quality of the surrounding area.                                                                                                                                                                                                                                                                                                                                                                                                                 |
| (l) to encourage a strategic approach to coastal management.                                                                                                                                                     | See Section 5.5.3.4 of this Report                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <p><b>Clause 8 - Matters for consideration</b></p> <p>The matters for consideration are the following:</p>                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| (a) the aims of this Policy as set out in clause 2,                                                                                                                                                              | As discussed in addressing the Aims of the Policy.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

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| (b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved, | As discussed in addressing the Aims of the Policy.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| (c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,                                                                                                                                      | As discussed in addressing the Aims of the Policy.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| (d) the suitability of development given its type, location and design and its relationship with the surrounding area,                                                                                                                                               | As discussed in addressing the Aims of the Policy.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| (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,                       | As discussed in addressing the Aims of the Policy.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| (f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,                                                                                                                                                             | As discussed in addressing the Aims of the Policy.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| (g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,                                                                                               | <p>As discussed in Sections 5.1 and 5.2 above.</p> <p>Both the NSW Environment Protection Authority and NSW Department of Primary Industries – Fisheries NSW have provided comment on the proposed changes to the method of collection and disposal of sewer from the approved marina development.</p> <p>The Authorities are generally not supportive of the changes given the high environmental quality and conservation value of the greater Twofold Bay foreshore and waterway areas.</p> <p>See Section 5.5.5 of this Report.</p> |
| (h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats                                                                                       | <p>As discussed in Section 5.1 and 5.2 above.</p> <p>The NSW Department of Primary Industries – Fisheries NSW have provided comment on the proposed changes to the method of</p>                                                                                                                                                                                                                                                                                                                                                        |

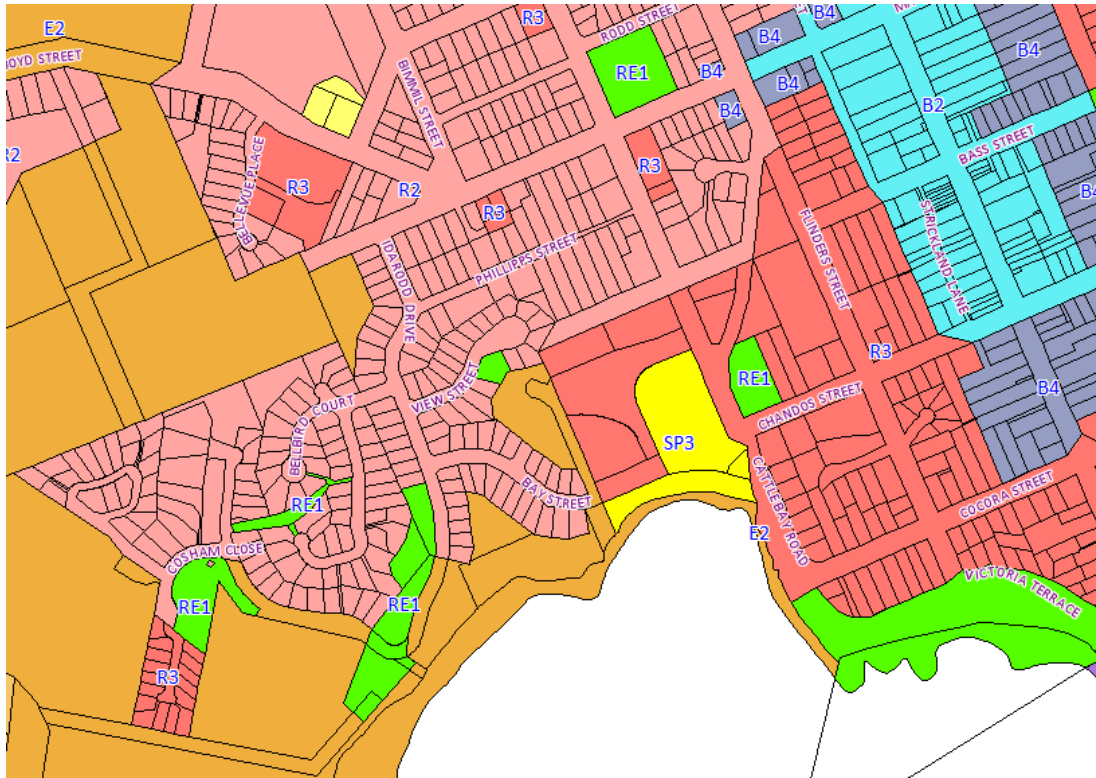
|                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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|                                                                                                                                                               | <p>collection and disposal of sewer from the approved marina development.</p> <p>The Authority is generally not supportive of the changes given the high environmental quality and conservation value of the greater Twofold Bay foreshore and waterway areas.</p> <p>See Section 5.5.5 of this Report.</p>                                                                                                                                                                                                                                                                                   |
| (i) existing wildlife corridors and the impact of development on these corridors,                                                                             | Existing wildlife corridors would not be affected.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| (j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards, | See Section 5.5.4 of this Report.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| (k) measures to reduce the potential for conflict between land-based and water-based coastal activities,                                                      | The siting and design of the proposed holding tanks would not directly result in conflict between land based and water based coastal activities. However, it has to be acknowledged that any pollution incident stemming from operational failure of the proposed system may have significant environmental and public health risks which may result in potential impacts on coastal activities such as passive and active recreational pursuits and sustainable aquaculture.                                                                                                                 |
| (l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,                                               | See Aims of the Policy as relevant.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| (m) likely impacts of development on the water quality of coastal waterbodies,                                                                                | The siting and design of the proposed holding tanks would have no direct impact on the water quality. However, it has to be acknowledged that any pollution incident stemming from operational failure of the proposed system may have significant impacts on water quality within the marine environment. Accordingly, the proposal presents an unacceptable and avoidable risk to public health and environmental risk to the receiving waters of Twofold Bay and the environmentally sensitive transport corridors between the approved marina and the Merimbula sewerage treatment plant. |

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| (n) the conservation and preservation of items of heritage, archaeological or historic significance,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | See Aims of the Policy as relevant                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| (o) only in cases in which a Council prepares a draft local environmental plan<br><br>that applies to land to which this Policy applies, the means to encourage compact towns and cities,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Not applicable to this assessment.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p>(p) only in cases in which a development application in relation to proposed development is determined:</p> <ul style="list-style-type: none"> <li>i. the cumulative impacts of the proposed development on the environment, and</li> <li>ii. measures to ensure that water and energy usage by the proposed development is efficient.</li> </ul> <p>Note: Clause 92 of the Environmental Planning and Assessment Regulation 2000 requires the Government Coastal Policy (as defined in that Clause) to be taken into consideration by a consent authority when determining</p> <p>development applications in the local government areas identified in that Clause or on land to which the Government Coastal Policy applies.</p> | <p>The proposed development involves a significant change in the method and collection and disposal of sewage from the approved marina development.</p> <p>The proposal presents an unacceptable and avoidable environmental risk to the waters of Twofold Bay and the environmentally sensitive transport corridors between the approved marina and the Merimbula sewerage treatment plant.</p> <p>The potential environmental impacts associated with the proposed change are not inconsequential and would contribute to the overall cumulative impacts associated with the approved marina development.</p> <p>Whilst mitigation measures could be introduced to limit potential environmental impacts, there are no justified or sustainable grounds which would reasonably support the adoption of an alternate sewage treatment system which would be superior to direct connection to Council's reticulated sewer.</p> |

Given the above, whilst generally not inconsistent with some of the Aims and requirements of the SEPP, the proposal presents an unacceptable and avoidable risk to public health and environmental risk to the receiving waters of Twofold Bay and the environmentally sensitive road transport corridors between the approved marina and the Merimbula sewerage treatment plant. Accordingly, the proposal is not sustainable and would be contrary to the provisions of the SEPP (as relevant) and therefore is not supported.

## Bega Valley Local Environmental Plan 2013 (BVLEP 2013)

### Clause 2.3 – Landuse Tables



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

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

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

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

The change in the proposed method of on-site collection and disposal of sewage from the approved marina would not be inconsistent with the Objectives or precluded by the provisions of the SP3 Tourist Zone.

On the other hand, the Objectives of the E2 – Environmental Conservation Zone are to protect, manage and restore areas of high ecological, scientific, cultural or aesthetic value and to prevent development that could destroy, damage or otherwise have an adverse effect on those values.

As reported above, the change in the proposed method of collection and disposal of sewage has an increased environmental risk resulting from accidental spillage or leakage of sewage during transfer from mobile pump-out carts to holding tanks or from the holding tanks to trucks, or due to leaks/breakages in the holding tanks or road tankers on route.

The proposed changes would result in unacceptable and avoidable environmental risk to the receiving waters of Twofold Bay and the environmentally sensitive transport corridors which would be contrary to the Objectives of the E2 Zone and as such, should not be supported.

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

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

| Standard                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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| <p><b><i>Clause 1.2 - Aims of Plan</i></b></p> <p>(a) to protect and improve the economic, natural and social resources of Bega Valley through the principles of ecologically sustainable development, including conservation of biodiversity, energy efficiency and taking into account projected changes as a result of climate change,</p> <p>(b) to provide employment opportunities and strengthen the local economic base by encouraging a range of enterprises, including tourism, that respond to lifestyle choices, emerging markets and changes in technology,</p> <p>(c) to conserve and enhance environmental assets, including estuaries, rivers, wetlands, remnant native vegetation, soils and wildlife corridors,</p> <p>(d) to encourage compact and efficient urban settlement,</p> <p>(e) to ensure that development contributes to the natural landscape</p> | <p>The siting and design of the proposed holding tanks would not be inconsistent with the ESD Principles. However, it has to be acknowledged that any pollution incident stemming from operational failure of the proposed system may have significant environmental impacts and as such, ESD Principles must be applied in considering and determining the current application.</p> <p>See Section 5.5.3.2 of this Report</p> <p>The proposed changes in the method of collection and disposal of sewage from the approved marina would have no discernible employment and/or economic benefits to the local community. However, allowing optional connection to Council's reticulated sewer would increase the financial burden on contributing rate payers and is not supported.</p> <p>The proposed change in the method of collection and disposal of sewage from the approved marina would have no influence on the character of Eden's urban settlement pattern.</p> <p>The siting and design of the proposed holding tanks would not be out of character with the</p> |

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| <p>and built form environments that make up the character of Bega Valley,</p> <p>(f) to provide opportunities for a range of housing choice in locations that have good access to public transport, community facilities and services, retail and commercial services and employment opportunities,</p> <p>(g) to protect agricultural lands by preventing land fragmentation and adverse impacts from non-agricultural land uses,</p> <p>(h) to identify and conserve the Aboriginal and European cultural heritage of Bega Valley,</p> <p>(i) to restrict development on land that is subject to natural hazards,</p> <p>(j) to ensure that development has minimal impact on water quality and environmental flows of receiving waters.</p> | <p>approved marina development or the natural and manmade environments associated with the foreshore and greater waterway area of Twofold Bay.</p> <p>The proposed change in the method of collection and disposal of sewage from the approved marina would have no influence over housing choice and/or availability in Eden or the Bega Valley Shire in general.</p> <p>The proposed change in the method of collection and disposal of sewage from the approved marina would have no influence over agricultural activity or worth within the Bega Valley Shire.</p> <p>The proposed change in the method of collection and disposal of sewage from the approved marina would have no impact on cultural heritage (Aboriginal and European)</p> <p>The siting and design of the proposed holding tanks would have no direct impact on the water quality. However, it has to be acknowledged that any pollution incident stemming from operational failure of the proposed system may have significant adverse impacts on water quality within the marine environment.</p> <p>Given the above, whilst generally not inconsistent with some of the Aims of the Plan, the proposal presents an unacceptable and avoidable public health risk and environmental risk to the receiving waters of Twofold Bay and the environmentally sensitive road transport corridors between the approved marina and the Merimbula sewerage treatment plant. Accordingly, the proposal is not sustainable and would be contrary to the Aims of the Plan (as relevant) and therefore should not be approved.</p> |
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| <p><b>Clause 4.3 Height of buildings</b></p> <p>(1) The objectives of the Clause are:</p> <p>(a) to retain the existing character and landscape of the locality and encourage a low-set building form,</p> <p>(b) to protect residential amenity, views, privacy and solar access.</p> <p>(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.</p>                                                                                                                                                                                    | <p>The maximum height of building nominated on the Height of Building Map is 10 metres.</p> <p>No details have been provided as part of the current application which demonstrates the height of the proposed holding tanks. Notwithstanding, given the capacity of the individual tanks and associated screening, it is considered unlikely that tanks would exceed 10 metres in height.</p> <p>The proposed tanks, given their likely character and screen treatment, would not impact on the existing amenity of adjoining residential areas.</p> <p>Given the above, the proposed siting and design of the tanks would be consistent with the Objectives of the Clause.</p> |
| <p><b>Clause 5.5 - Development within the coastal zone</b></p> <p>(1) The objectives of this clause are as follows:</p> <p>(a) to provide for the protection of the coastal environment of the State for the benefit of both present and future generations through promoting the principles of ecologically sustainable development,</p> <p>(b) to implement the principles in the NSW Coastal Policy, and in particular to:</p> <p>(i) protect, enhance, maintain and restore the coastal environment, its associated ecosystems, ecological processes and biological diversity and its water quality, and</p> | <p>Whilst generally not inconsistent with some of the Objectives of the Plan, the proposal presents an unacceptable and avoidable risk to public health and environmental risk to the receiving waters of Twofold Bay and the environmentally sensitive road transport corridors between the approved marina and the Merimbula sewerage treatment plant. Accordingly, the proposal is not sustainable and would be contrary to the Objectives and requirements of the Plan and therefore should not be approved.</p>                                                                                                                                                            |

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| <ul style="list-style-type: none"> <li>(ii) protect and preserve the natural, cultural, recreational and economic attributes of the NSW coast, and</li> <li>(iii) provide opportunities for pedestrian public access to and along the coastal foreshore, and</li> <li>(iv) recognise and accommodate coastal processes and climate change, and</li> <li>(v) protect amenity and scenic quality, and</li> <li>(vi) protect and preserve rock platforms, beach environments and beach amenity, and</li> <li>(vii) protect and preserve native coastal vegetation, and</li> <li>(viii) protect and preserve the marine environment,</li> <li>(ix) ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and</li> <li>(x) ensure that decisions in relation to new development consider the broader and cumulative impacts on the catchment, and</li> <li>(xi) protect Aboriginal cultural places, values and customs, and</li> <li>(xii) protect and preserve items of heritage, archaeological or historical significance.</li> </ul> <p>(2) Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered:</p> |  |
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| <p>(a) existing public access to and along the coastal foreshore for pedestrians (including persons with a disability) with a view to:</p> <ul style="list-style-type: none"> <li>(i) maintaining existing public access and, where possible, improving that access, and</li> <li>(ii) identifying opportunities for new public access, and</li> </ul> <p>(b) the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:</p> <ul style="list-style-type: none"> <li>(i) the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and</li> <li>(ii) the location, and</li> <li>(iii) the bulk, scale, size and overall built form design of any building or work involved, and</li> </ul> <p>(c) the impact of the proposed development on the amenity of the coastal foreshore including:</p> <ul style="list-style-type: none"> <li>(i) any significant overshadowing of the coastal foreshore, and</li> <li>(ii) any loss of views from a public place to the coastal foreshore, and</li> </ul> <p>(d) how the visual amenity and scenic qualities of the coast, including coastal headlands, can be protected, and</p> <p>(e) how biodiversity and ecosystems, including:</p> <ul style="list-style-type: none"> <li>(i) native coastal vegetation and existing wildlife corridors, and</li> </ul> |  |
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| <ul style="list-style-type: none"> <li>(ii) rock platforms, and</li> <li>(iii) water quality of coastal waterbodies, and</li> <li>(iv) native fauna and native flora, and their habitats, can be conserved, and</li> </ul> <p>(f) the cumulative impacts of the proposed development and other development on the coastal catchment.</p> <p>(3) Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:</p> <ul style="list-style-type: none"> <li>(a) the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and</li> <li>(b) if effluent from the development is disposed of by a non-reticulated system, it will not have a negative effect on the water quality of the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and</li> <li>(c) the proposed development will not discharge untreated stormwater into the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and</li> <li>(d) the proposed development will not: <ul style="list-style-type: none"> <li>(i) be significantly affected by coastal hazards, or</li> <li>(ii) have a significant impact on coastal hazards, or</li> <li>(iii) increase the risk of coastal hazards in relation to any other land.</li> </ul> </li> </ul> |  |
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| <p><b>Clause 5.10 Heritage Conservation</b></p> <p>The relevant provisions of the Clause are:</p> <p><b>(1) Objectives</b></p> <p>The objectives of this clause are as follows:</p> <ul style="list-style-type: none"> <li>(a) to conserve the environmental heritage of Bega Valley,</li> <li>(b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,</li> <li>(c) to conserve archaeological sites,</li> <li>(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.</li> </ul> <p><b>(2) Requirement for consent</b></p> <p>Development consent is required for any of the following:</p> <ul style="list-style-type: none"> <li>(a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance): <ul style="list-style-type: none"> <li>(i) a heritage item,</li> <li>(ii) an Aboriginal object,</li> <li>(iii) a building, work, relic or tree within a heritage conservation area,</li> </ul> </li> <li>(b) altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item,</li> </ul> | <p>The proposed change in the method of collection and disposal of sewage from the approved marina would have no impact on cultural heritage (Aboriginal and European) over and above that recognised as part of the original reporting and assessment of the marina development.</p> <p>Given the above, the proposal would not be inconsistent with this Clause.</p> <p>Suitable conditions (Conditions 37 to 42 inclusive) were imposed in the Development Consent for the marina development relating to heritage conservation.</p> <p>A modification to those Conditions is not considered warranted.</p> |
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| <p>(c) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,</p> <p>(d) disturbing or excavating an Aboriginal place of heritage significance,</p> <p>(e) erecting a building on land:</p> <ul style="list-style-type: none"> <li>(i) on which a heritage item is located or that is within a heritage conservation area, or</li> <li>(ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,</li> </ul> <p><b>(3) Effect of proposed development on heritage significance</b></p> <p>The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies</p> <p>regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).</p> <p><b>(4) Heritage assessment</b></p> <p>The consent authority may, before granting consent to any development:</p> <ul style="list-style-type: none"> <li>(a) on land on which a heritage item is located, or</li> <li>(b) on land that is within a heritage conservation area, or</li> </ul> |  |
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- (c) on land that is within the vicinity of land referred to in paragraph (a) or (b)

require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

**(5) Heritage conservation management plans**

The consent authority may require, after considering the heritage significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.

**(6) Archaeological sites**

The consent authority must, before granting consent under this clause to the carrying out of development on an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the *Heritage Act 1977* applies):

- (a) notify the Heritage Council of its intention to grant consent, and
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.

**(7) Aboriginal places of heritage significance**

The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance:

- (a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or

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| <p>reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and</p> <p>(b) notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <p><b>Clause 6.3 – Flood planning</b></p> <p><b>6.3 Flood planning</b></p> <p>(1) The objectives of this clause are as follows:</p> <p>(a) to minimise the flood risk to life and property associated with the use of land,</p> <p>(b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,</p> <p>(c) to avoid significant adverse impacts on flood behaviour and the environment.</p> <p>(2) This clause applies to land at or below the flood planning level.</p> <p>(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:</p> <p>(a) is compatible with the flood hazard of the land, and</p> <p>(b) is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential</p> | <p>Whilst the site is periodically affected by localised flooding during major storm events, it is not mapped as flood liable under the provisions of the BVLEP 2013.</p> <p>However, the preparation of a flood emergency response plan was considered justified and warranted as part of the approval for the marina development.</p> <p>Potential flood impacts on the proposed sewage holding tanks and infrastructure would need to be considered in the preparation of the flood emergency response plan.</p> <p>A suitable condition (Condition 29) was imposed in the Development Consent for the marina development.</p> <p>A modification to the Condition is not considered warranted.</p> <p>See Section 5.5.3.3 of this Report.</p> |

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| <p>flood affectation of other development or properties, and</p> <p>(c) incorporates appropriate measures to manage risk to life from flood, and</p> <p>(d) is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and</p> <p>(e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.</p> <p>(4) A word or expression used in this clause has the same meaning as it has in the <i>Floodplain Development Manual</i> (ISBN 0 7347 5476 0) published by the NSW Government in April 2005, unless it is otherwise defined in this clause.</p> <p>(5) In this clause, <b><i>flood planning level</i></b> means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.</p> |                                            |
| <p><b>Clause 6.4 – Coastal risk planning</b></p> <p>(1) The objectives of this clause are as follows:</p> <p>(a) to avoid significant adverse impacts from coastal hazards,</p> <p>(b) to ensure uses of land identified as coastal risk are compatible with the risks presented by coastal hazards,</p> <p>(c) to enable the evacuation of land identified as coastal risk in an emergency,</p> <p>(d) to avoid development that increases the severity of coastal hazards.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                             | <p>See Section 5.5.3.4 of this Report.</p> |

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| <p>(2) This clause applies to:</p> <p>(a) land in the coastal zone below the 3 metre AHD contour, or</p> <p>(b) land at or below the level of a 1:100 ARI (average recurrent interval) coastal inundation or erosion event.</p> <p>(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:</p> <p>(a) is not likely to cause detrimental increases in coastal risks to other development or properties, and</p> <p>(b) is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment, and</p> <p>(c) incorporates appropriate measures to manage risk to life from coastal risks, and</p> <p>(d) is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards, particularly if the development is located seaward of the immediate hazard line, and</p> <p>(e) provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards.</p> <p>(4) A word or expression used in this clause has the same meaning as it has in the <i>NSW Coastal Planning Guideline: Adapting to Sea Level Rise</i> (ISBN 978-1-74263-035-9) published by the NSW Government in August 2010, unless it is otherwise defined in this clause.</p> |  |
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| <p>(5) In this clause, <b><i>coastal hazard</i></b> has the same meaning as in the <u><i>Coastal Protection Act 1979</i></u>.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <p><b>Clause 6.6 – Riparian land and watercourses</b></p> <p>(1) The objective of this clause is to protect and maintain the following:</p> <p>(a) water quality within watercourses,</p> <p>(b) the stability of the bed and banks of watercourses,</p> <p>(c) aquatic and riparian habitats,</p> <p>(d) ecological processes within watercourses and riparian areas.</p> <p>(2) This clause applies to the following land:</p> <p>(a) land identified as “Watercourse” on the <u>Riparian Lands and Watercourses Map</u>,</p> <p>(b) all land that is within 40 metres of the top of the bank of each watercourse on land identified as “Watercourse” on that map.</p> <p>(3) Before determining a development application for development on land to which this clause applies, the consent authority must consider:</p> <p>(a) whether or not the development is likely to have any adverse impact on the following:</p> <p>(i) the water quality and flows within the watercourse,</p> <p>(ii) aquatic and riparian species, habitats and ecosystems of the watercourse,</p> <p>(iii) the stability of the bed and banks of the watercourse,</p> | <p>The subject land is traversed by 2 defined gully systems which discharge to Twofold Bay.</p> <p>The subject land forms part of a much larger stormwater catchment which generally extends to the north.</p> <p>The gullies and watercourses are mapped by BVLEP 2013 and as such, the provisions of the Clause have relevance.</p> <p>The land based component of the approved marina has been extensively disturbed by past industrial activities.</p> <p>The water courses have been piped and are located under an existing concrete slab area. The pipe at the present time discharges through a primitive gross pollutant trap adjacent an existing seawall before discharging directly to the Twofold Bay.</p> <p>The land based component of the marina development comprises the erection of temporary buildings, service infrastructure and the renovation of the concrete slabs to facilitate the on-site provision of carparking.</p> <p>The refurbishment and temporary use of the existing stormwater drainage system approved as part of the approved marina development would not be affected by the proposed change in the method of collection and disposal of sewage.</p> |

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| <ul style="list-style-type: none"> <li>(iv) the free passage of fish and other aquatic organisms within or along the watercourse,</li> <li>(v) any future rehabilitation of the watercourse and riparian areas, and</li> <li>(b) whether or not the development is likely to increase water extraction from the watercourse, and</li> <li>(c) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</li> <li>(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that: <ul style="list-style-type: none"> <li>(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or</li> <li>(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or</li> <li>(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.</li> </ul> </li> </ul> |  |
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### 5.5.3.2 Section 79C(1)(a)(ii) – the provisions of any proposed environmental planning instrument

#### DRAFT NSW COASTAL MANAGEMENT SEPP 2016

**Note:** that at the time of preparation of this Report, the prescription of the Draft SEPP was not imminent.

The SEPP applies to the land based component of the approved marina as it is located with a designated coastal environment area.

*The Aim of Policy is:*

*“The aim of this Policy is promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the Coastal Management Act 2016 by:*

- (a) managing development in the coastal zone and protecting the environmental assets of the coast, and*
- (b) establishing a framework for land use planning to guide decision-making in the coastal zone, and*
- (c) mapping the 4 coastal management areas which comprise the NSW coastal zone, in accordance with the definitions in the Coastal Management Act 2016.”*

The relevant provisions of the Draft SEPP in the assessment and determination of the current application are:

#### **Clause 14 - Development on land within the coastal environmental**

Under the Clause, development consent must not be granted to development on land that is wholly or partly within the coastal environmental area unless the consent authority is satisfied that the proposed development meets specific provisions. On assessment, the relevant provisions are:

- “(a) is not likely to cause adverse impacts on the biophysical, hydrological surface and groundwater) and ecological environment, and”*
- “(c) is not likely to have an adverse impact on the water quality of the marine estate(within the meaning of the Marine Estate Management Act 2014), in particular, having regard to the cumulative impacts of the proposed development on the marine estate including sensitive coastal lakes, and”*
- “(d) is not likely to have an adverse impact on native vegetation and fauna and their habitats, undeveloped headlands and rock platforms, and”*
- “(e) will not adversely impact Aboriginal cultural heritage and places, and”*
- “(f) incorporates water sensitive design, including consideration of effluent and stormwater management, and”*

The proposal presents an unacceptable and avoidable risk to public health and environmental risk to the receiving waters of Twofold Bay and the environmentally sensitive road transport corridors between the approved marina and the Merimbula sewerage treatment plant. Accordingly, the proposal is not sustainable and would be contrary to the provisions of the Draft SEPP (as relevant) and therefore is not supported.

#### **Clause 15 - Development on land within the coastal use area**

Under the Clause, development consent must not be granted to development on land that is wholly or partly within the coastal use area unless the consent authority is satisfied that the proposed development meets specific provisions. On assessment, the relevant provisions are:

- “(a)(i) if near a foreshore, beach, headland or rock platform—maintains or, where practicable, improves existing, safe public access to and along the foreshore, beach, headland or rock platform, and”*

*“(b) has taken into account the type and location of the proposed development, and the bulk, scale and size of the proposed development.”*

The proposal presents an unacceptable and avoidable risk to public health and environmental risk to the receiving waters of Twofold Bay and the environmentally sensitive road transport corridors between the approved marina and the Merimbula sewerage treatment plant which, in the event of a pollution incident, may limit or restrict safe public access.

Accordingly, the proposal is not sustainable and would be contrary to the provisions of the Draft SEPP (as relevant) and therefore is not supported.

**Clause 16 - Development in the coastal zone generally – development not to increase risk of coastal hazards.**

Under the Clause, Development consent must not be granted to development on land within the coastal zone (other than land to which clause 13 applies) unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Potential risk factors have been considered in Section 5.5.3.4 of this Report.

**5.5.3.3 Section 79C(1)(a)(iii) – the provisions of any development control plan.**

**BEGA VALLEY DEVELOPMENT CONTROL PLAN 2013**

The Plan supplements the Bega Valley Local Environmental Plan 2013 by providing detailed reasoning, guidelines, requirements and general information relating to the decision making process and ensures that future development is consistent with the desired future character and community vision for the Bega Valley Shire’s towns, villages, urban settlements and rural areas.

The current Section 96(2) Application has been assessed in accordance with relevant provisions of the Plan including:

- Sustainable Design Principles
- On-site Sewerage Management
- Planning for Hazards
- Contaminated Land

**Sustainable Design Principles (Section 5.5)**

The Plan embodies the Principles of Ecological Sustainable Development.

The stated Objective of the Plan is:

- *“Ensure that sustainable design principles are considered in developments.”*

Ecological Sustainable Development, according to the National Strategy, means using, conserving and enhancing the community's resources so that ecological processes, on

which life depends, are maintained and the quality of life for both present and future generations is increased. Sustainable development in the National Strategy is embraced in four Principles.

These are:

### **The Precautionary Principle**

Applying the Precautionary Principle requires an assessment to be made based on:

- whether or not the potential impacts of a development pose a threat of serious or irreversible damage on human health or the environment; and
- the lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

It is considered that the now proposed method of collection and disposal of sewage from the approved marina presents unacceptable and avoidable public health and environmental risks and as such, the precautionary principle must be applied and the proposal should not be approved.

### **Intergenerational Equity**

Intergenerational Equity requires that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

It is considered that the now proposed method of collection and disposal of sewage from the approved marina presents an unacceptable and avoidable risk to public health and environmental risk to the receiving waters of Twofold Bay and the environmentally sensitive road transport corridors between the approved marina and the Merimbula sewerage treatment plant. Accordingly, to ensure intergenerational equity, the proposal should not be approved.

### **Conservation of Biological Diversity and Ecological Integrity**

Biological diversity refers to the diversity of genes, species, populations, communities and ecosystems and the linkages between them.

It is considered that the now proposed method of collection and disposal of sewage from the approved marina poses unacceptable and avoidable public health and environmental risks and as such, the proposal should not be approved.

### **Improved Valuation, Pricing and Incentive Mechanisms**

This Principle is a component of “intergenerational equity” and establishes the need to determine economic values for services provided by the natural environment, for example, the atmosphere’s ability to receive emissions, cultural values and visual amenity.

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The current application effectively concludes that the value of environmental resources affected by the proposed change in the method of collection and disposal of sewage from the approved marina has been acknowledged and provided for through the examination of environmental consequences and the identification of appropriate mitigation measures.

Whilst suitably worded conditions could be imposed in the body of the Consent to offset potential adverse consequences, the change in the method of collection and disposal of sewage from the approved marina would still pose, in the event of a pollution incident, unacceptable and avoidable environmental and public health risks.

The proposal is contrary to ESD Principles and therefore should not be approved.

### **On-site Sewerage Management (Section 5.7)**

The stated Objective is:

- *“Safeguard and improve the quality of public and environmental health within the Bega Valley Shire by regulating the approval of systems of on-site sewage management.”*

The Plan applies to all land in the Bega Valley Shire where a reticulated sewerage service is not available. The Plan must be read in conjunction with Council’s adopted On-site Sewage Management Policy and related adopted procedures being:

- Policy 3.03 On-site Sewage Management (adopted 8 June 2010); and
- Procedure 3.03.2 OSM Interpretations (adopted 24 February 2014)

Copies of Council’s BVDCP 2013 (extract Section 5.7) and Council’s adopted Policy and Procedure are attached in Appendix 5 to this Report.

In application, the provisions of the DCP and that of Council’s adopted Policy and Procedure detail the heads of consideration which Council must take into account in determining the appropriateness of a site for the purpose of effectively accommodating an on-site sewage management system. The controls and standards generally revolve around the ability to connect to Council’s reticulated sewerage system, environmental constraints and risk factors.

The applicant, in support of the proposed change in the method of collection and disposal of sewage, has effectively stated that the proposal would be consistent with the provision of the DCP and that of Council’s adopted Policy and Procedure provided suitable mitigation measures are applied to limit potential environmental risk.

On assessment, the applicant appears to have misinterpreted the purpose and context of the controls. The controls are focused on how Council will manage on-site sewage management within its local government area and are designed to promote sustainable on-site sewage management and guide landowners to best practice.

In this instance, the subsequent approval of any on-site sewage management system within 50m from the foreshore to Cattle Bay is neither sustainable or best practice and would pose a critical risk (as defined by Council's Procedure 3.03.2) given its close proximity to existing shellfish farming operations in Twofold Bay.

Given the above, the departure from Council's DCP and applied Policy and Procedure is not supported on the basis that:

- Direct on-site connection to Council's reticulated sewerage system is available;
- The proposed change in the method of collection and disposal of sewage would pose unacceptable and avoidable environmental and public health risks; and
- Would be inconsistent with Council's obligations to promote ecologically sustainable development.

## **Planning for Hazards (Section 5.8)**

### **Flood Planning (Section 5.8.1)**

The stated Objectives are:

- *"Minimise the impacts of flooding on development within flood prone land or potentially flood prone land.*
- *Ensure that development on flood prone land is consistent with the objectives of the NSW Flood Prone Land Policy 1984 and NSW Floodplain Development Manual 2005.*
- *Ensure the impact of climate change is considered when assessing development of flood prone land."*

The proposed sewage holding tanks would be located within the curtilage of the approved temporary buildings associated with the land based component of the marina. The area may, from time to time, be exposed to minor localised flooding during major storm events.

The preparation of a flood emergency response plan was considered justified and warranted as part of the approval for the marina development. It was anticipated that such a plan could involve the monitoring of flood events, actions for evacuation of staff and visitors and recommendations relating to the provision of fencing, signage, power, lighting and mitigating the risk associated with debris impact to buildings.

Potential flood impacts on the proposed sewage holding tanks and associated infrastructure would need to be considered in the preparation of the flood emergency response plan.

No change in the relevant Development Consent Condition (Condition 29) is considered warranted.

### **Coastal Hazards (Section 5.8.2)**

The stated Objectives are:

- *“To guide development in areas of potential coastal risk until detailed mapping is completed by Council.*

*Ensure that development on coastal land is consistent with the objectives of the NSW Coastal Planning Guideline : Adapting to Sea Level Rise 2010*

*Ensure the impact of climate change is consistent when assessing development on coastal land.”*

The approved marina development would be exposed to and would influence coastal processes. Those being:

- Wave climate (local wind generated waves and ocean swells).
- Elevated water levels (climate change).
- Water movement patterns.
- Sediment movement and shoreline stability.

See Section 5.5.3.4 of this Report which details Council current position regarding Coastal Hazards.

### **Contaminated Land (Clause 5.8.3)**

The stated Objective is:

- *“Safeguard and improve the quality of public and environmental health by ensuring that any land contamination issues are resolved in the planning process.”*

Extensive site investigation and reporting was undertaken to address potential site contamination in the assessment and determination of the Major Project Concept Approved (05\_0032).

The Concept Approval identifies that some site remediation would be necessary in accordance with the recommendations contained within the report prepared by Aargus dated June 2007 entitled ‘Environmental Site Assessment’. A suitable condition was imposed on the Concept Approval.

The Report recommended the removal of the 150mm of the site and additional validation testing to confirm that all soils on-site meet respective land use criteria and concluded, that the site would be suitable to sustain the development provided the recommendations in the Report were acted on.

In response, appropriate conditions (Conditions 30 and 31) were imposed in the Development Consent for the marina development.

The now proposed changes to the proposed method of collection and disposal of sewage from the approved marina would not require a modification to the wording of the Consent.

#### **5.5.3.4 Section 79C(1)(a)(v) – any coastal zone management plan (within the meaning of the Coastal Protection Act 1979).**

Bega Valley Shire Council has prepared and adopted a Coastal Processes and Hazards Definition Study (CPHDS), as the first stage of the development of a coastal zone management plan (now a Coastal Program under the Coastal reforms) in accordance with the Coastal Protection Act 1979.

Council is currently preparing a Coastal Program – Coastal Hazards for the open coast based on the outcomes of the CPHDS, that will identify management responses for priority areas identified as having high coastal hazard risks.

The land based component of the approved marina is located within a hazard zone identified in the CPHDS. The CPHDS delineates modelled hazard lines for the current 2050 and 2100 planning horizons. These hazard lines are presented for each time horizon, “most certain”, “unlikely” and “rare”. For each of the 3 planning horizons, the Study has identified potential coastal recession hazards at the subject site. However, this will require more detailed investigation to examine the influence of an existing foreshore retaining wall on resisting coastal erosion, storm wave overtopping and coastal inundation.

The Study was not of sufficient fine scale to examine the localised potential for wave overtopping of the retaining wall and thus, potential impact on proposed land based infrastructure associated with the marina development. Accordingly, any proposed on-site sewage management system and its operation would need to be designed and constructed accordingly.

No detail has been submitted as part of the current application to modify the approval which adequately addresses the issue. Accordingly, if the application to modify the approval is granted, a suitable condition should be imposed on any subsequent consent.

Such a condition could read:

- As part of any subsequent construction certificate application, the applicant shall submit detailed design plans to the Principal Certifying Authority for the construction and operation of the proposed sewage collection and disposal system. The design plans shall be prepared and certified by a suitably qualified and experienced coastal hazards engineering addressing potential impacts of coastal erosion, wave overtopping and inundation.

#### **5.5.4 Section 79C(1)(b) and (c) – the likely impacts of the development and the suitability of the site.**

The Cattle Bay Marina development is located within an environmentally sensitive location and environmental integrity and public health are of paramount importance in the assessment and determination of the current application.

It has to be acknowledged, that in the event of operational or systems failure, the now proposed method of treatment presents unacceptable and avoidable public health and environmental risks.

It is considered that a septic sewerage system, combined with regular pump-out is not an appropriate or sustainable method of sewage disposal for a development of this size and location where a reticulated town sewerage system is available and there is no limitation on direct on-site connect to system.

The development is located within Council's adopted Development Servicing Plan – Sewerage Services for Eden and therefore, like any other development, it must connect to the reticulation network. It is important that all properties are connected to the sewer to effectively meet community expectations in regard to public health and environmental integrity.

Reticulated sewerage services provide significant public health and environmental benefits compared to on-site sewage management. These benefits are well documented and apply to the community served, visitors and the surrounding areas. Sewerage service provision requires long term planning and investment to ensure that the capacity of the system is reliable to meet both the current and future needs of the community served.

Section 124 of the Local Government Act 1993 (Order 24) includes provisions to order a connection to sewer where there is an available service. Allowing optional connection (as proposed) would erode environmental and public health benefits and also increase the financial burden on the contributing rate payers.

Section 64 of the Local Government Act 1993 conveys Council with powers under Division 5 of Part 2 of Chapter 6 of the Water Management Act 2000. The Division allows Council to issue certificates of compliance for works required as part of a development, and allows Council to levy developer contributions, or require developers to undertake works or both. The developer contributions levied as part of a Water Management Act certificate of compliance process are calculated using an equivalent tenement method.

The water and sewer demand from non-residential and commercial developments are assessed and converted into Equivalent Tenements (ET). This applies a proportional measure to the development against that of a single domestic residence. It should be noted the ET measure includes components of both volume and pollutant mass load.

As originally approved and pursuant to the provisions of the Local Government Act 1993 and Water Management Act 2000, Council imposed a S64 developer contribution of 0.37ET/berth for both water and sewer. Council's position was

effectively based on the recommendations as documented in the application at the time - Water and Wastewater Servicing Strategy, submitted by Royal Haskoning DHV on behalf of Eden Resort Hotel P/L on 17/04/2015.

The approach was based on established practice by municipal water authorities in Australia.

The applicant as part of the reporting of the original development for the marina calculated the ET wastewater contribution based on the volumetric pump rate of two mobile pump-out carts and an assessment of the shore based development.

Using the portable pump discharge capacity was not considered by Council as a rational approach as it fails to consider the number of carts in use and the likely use of shore based facilities in lieu of pump-out facilities on a moored vessel. The discrepancies in the load estimates are shown in the following table.

Table 1 Sewer Load Estimates

|                                                    | Proponent | Council Assessment |
|----------------------------------------------------|-----------|--------------------|
| Temporary Buildings 1&2 including public amenities | 3.7ET     | 3.78ET             |
| 154 berths                                         | 4ET       | 55.62ET            |
| Total                                              | 7.7ET     | 59.4ET             |

The modified proposal is based on the provision of a septic tank (4,000L) and effluent collection well (7,000) for Stage 1 of the development. This approach is typically used where reticulated sewerage services are not available and ground conditions prevent the use of soil absorption or irrigation.

The proponent has not provided the basis for the sizing of the septic tank and collection well. It has been estimated they would be suitable for approximately 1 or 2 domestic houses (2ET) based on weekly pump-out of effluent. This is substantially less than Council's assessment of 59.4 ET and also the proponent's earlier assessment of 7.7 ET for the marina development.

Council considers the modified proposal using a septic tank and collection well, and then trucking the waste to be inappropriate for an already sewered area and the design to be impractical to adequately protect public health and the environment.

Also, it is Council's position that the proposed modification only caters for Stage 1 of the marina development (85 berths and land based management and amenity infrastructure) and does not cater for the Stage 2 (69 berths). Accordingly, should Stage 2 of the marina come to fruition, then, it would be highly likely that the now proposed method of collection and disposal of sewage would be inadequate to cater for generated demand.

This is compounded by the fact that there is no guarantee that the mixed use tourist and residential development endorsed by the Major Project Concept Approval (05 - 0032) will come to fruition and as such, there is no guarantee that an alternative sewage treatment system will be available in the future.

#### **5.5.5 Section 79C(1)(d) – submissions**

##### **Agency Submissions**

The current application seeking to modify the marina approval was referred to a number of State Agencies for assessment, comment and/or requirements

The following represents a summary of the submissions.

##### **Environment Protection Authority**

In summary, the Authority is not supportive in the now proposed method of collection and disposal of sewage from the approved marina development on the basis that the Cattle Bay has high conservation values which should not be exposed to environmental and public health risks.

Notwithstanding, the Authority has advised that if the proposed changes to the method of collection and disposal of sewage are approved then, the management strategies detailed in the application should be adopted and applied.

A copy of the Authority's submission is attached as Appendix 6 in this report.

##### **Department of Primary Industries Fisheries NSW**

In summary, the Authority has confirmed that the receiving waters of Twofold Bay are sensitive Priority Oyster Aquaculture Areas and that harvesting standards are prescribed under the NSW Shellfish Program which is administered by NSW Food Authority and that the NSW oyster industry has a statutory responsibility to meet these standards.

The Authority has recognised that the now proposed collection and treatment of sewage from the approved marina development poses an increased risk of impact on water quality and that the preferred method of treatment would be direct connection to a reticulated sewerage system.

Notwithstanding, the Authority has advised that if the proposed changes to the method of collection and disposal of sewage are approved then, the management strategies detailed in the application should be adopted and applied.

A copy of the Authority's submission is attached as Appendix 7 in this report.

## **Internal Council Referrals**

### **Environmental Services**

Environmental Services have reviewed the proposed modification and have made the following comments;

Environmental services support direct connection to BVSC existing reticulated sewer infrastructure rather than the proposed septic sewerage system with regular pump out service.

Risks associated a septic pump out facility are unacceptable and unnecessary. Risks and impacts include but are not limited to;

- Handling and transfers at either end of the facility
- Road transportation to the nearest treatment facility at Merimbula (30km) expose important aquaculture catchments of Eden and Pambula to unnecessary risks associated with spills.
- Septic overflow at Cattle Bay into the marine environment.

Direct connection to the existing reticulated sewerage system provides the optimal long term solution and the best environmental outcomes in what is regarded as a sensitive marine environment. Ensuring a high standard of protection to the environment where development pressure is growing and greater impacts are likely is a priority in this location.

Environmental Services only support direct on-site connect to Council's reticulated sewerage system.

### **Health and Building Services**

Council's Health and Building Services have advised that the applicant appears to have misinterpreted the purpose and context of Council's adopted DCP and Policy and Procedures relating to the provision of on-site sewage management systems.

The controls are focused on how Council will manage on-site sewage management within its local government area and are designed to promote sustainable on-site sewage management and guide landowners to best practice.

It is considered that the approval of an on-site sewage management system within 50m from the foreshore to Cattle Bay is neither sustainable or best practice and would pose a critical risk (as defined by Council's Procedure 3.03.2) given its close proximity to existing shellfish farming operations in Twofold Bay. Accordingly, the departures from Council's DCP and applied Policy and Procedure are not supported on the basis that:

- Direct on-site connection to Council's reticulated sewerage system is available;
- The proposed change in the method of collection and disposal of sewage would pose unacceptable and avoidable environmental and public health risks; and

- Would be inconsistent with Council's obligations to promote ecologically sustainable development.

### **Engineering – Water and Sewer**

Council's engineering staff are not supportive of the now proposed method of collection and disposal of sewage from the approved marina development. Comment has been provided in Sections 5.3, 5.4, 5.4.4 and 6.0 of this Report.

#### **5.5.6 Public Interest**

As documented throughout this report, the proposed change in the method of collection and disposal of sewage from the approved marina development would pose significant public health and environmental risks. Accordingly, any potential impacts arising from the operation and/or failure of the system would not be in the public's interest.

## **6.0 SUITABILITY OF PROPOSED MODIFICATIONS**

The appropriateness of the now proposed modifications is addressed below:

### **Modification to Condition 1**

Condition 1 specifies the documentation on which Council and the SJRPP based their initial assessment and determination. As now proposed, the modification seeks to include specific consultant reports submitted in support of the now proposed change in the method of collection and disposal of sewage to Council's reticulated sewer system.

Based on other elements of the modification now being sought and Council's position as to their appropriateness, the inclusion of the reports in Condition 1 is not supported.

### **Modification to Condition 74**

The Condition requires the establishment of suitable easements to provide connection to Council's reticulated water and sewer services and electricity supply over Council's foreshore reserve (Lot 4 DP 1138056).

As now proposed, the modification seeks to amend the Condition, which if approved, would delete the reference to "sewerage".

The applicant's position is based on the assumption that a sewerage easement is not required as part of the marina development due to the transport of sewage being conducted in mobile pump-out carts.

The applicant's position is misguided as the modified proposal has not provided an appropriate or practical alternative to the connection to Council's reticulated sewer.

Sewage would still need to be transported across Council's foreshore reserve whether contained within a pipe, or above ground in a mobile pump-out cart. The easement is required to secure authority for the marina development to transport sewage across the reserve to the marina's land based sewerage connection point. Accordingly, the proposed modification is not supported.

### **Modification to Condition 80**

The Condition requires the applicant to apply for and obtain a Certificate of Compliance under the Water Management Act 2000 based on the generated demand by the approved marina for both water and sewage.

As now proposed, the modification seeks the deletion of the reference made to Council's sewerage network – (*59.4ET to the sewerage network*). This would effectively remove the provision requiring the payment of a headworks contribution (as assessed at the time of the original development approval) of \$668,606.40.

As calculated at the time of payment and based on Council's adopted (28 June 2017) Fees and Charges for 2017/18, the head works contribution payable would now be \$692,188.20.

The modified sewage servicing proposal has not provided an appropriate or practical alternative that would provide the same level of environmental and public health protection as a direct connection to Council's reticulated sewer.

The applicant has indicated that the sewage is proposed to be collected on-site and then transported via road to Council's treatment facility. It is to be noted, that the closest treatment facility for this purpose would be the Merimbula treatment plant some 30kms from the site.

The purpose of Section 64 headworks contributions is to fund upgrades to sewerage infrastructure to cater for the reduction in the system capacity as a result of development. The proposed change in the method of collection and disposal would still ultimately contribute sewage flows into Council's infrastructure and reduce the available capacity of the system. Accordingly, the proposed modification is not supported noting that the proposed modification is simply a mechanism designed to avoid the payment of Section 64 sewerage headworks contributions as provided for by the provisions of the Water Management Act 2000.

### **Modification to Conditions 54, 83, 84(b) and 85(a)**

These conditions relate to the need to submit detailed design plans to Council for endorsement to ensure direct on-site connection to Council's reticulated sewerage network (Conditions 83, 84(b) and 85(a)) and the need to ensure equitable compliant access for people with a disability to all elements of the approved marina development (Condition 54).

The applicant is seeking the deletion of these conditions on the basis of relevancy given the other determining elements of the proposed modification being sought.

The deletion of Condition 54 is not supported as the applicant has an obligation to ensure compliant access for people with disabilities across all elements of the approved marina development.

In relation to Conditions 83, 84(b) and 85(a) it is Council's position that a direct on-site connection to Council's reticulated sewerage system must be maintained and as such, the Conditions are essential components of the Consent and the effective and efficient operation of the approved marina development. Accordingly, the proposed deletion of the Conditions is not supported.

## **7.0 CONCLUSION**

As originally approved, sewage would be removed from the holding tanks of vessels by mobile sewage pump out carts and discharged to Council's reticulated sewer system via an on-site connection point and service conduit. The associated land based temporary management accommodation and amenities would discharge directly to Council's reticulated sewer system.

As now proposed, the new method of sewage disposal would involve the installation of bunded, on-site holding tanks for collection and servicing by a commercial waste management contractor and disposal to a Council off-site sewage treatment facility.

The applicant maintains that the current application seeking to modify the current approved method of sewage collection and disposal is worthy of support on the basis that:

- the site enjoys a unique set of circumstances which are linked to a Major Project Concept Approval (05 -0032) for mixed use tourist and residential development; and
- that any public health and environmental risks associated with the current proposal can be adequately managed and addressed by way of the imposition of suitably worded conditions into the Consent.

Whilst mitigation measures could be introduced to limit potential environmental impacts, there are no justified or sustainable grounds which would reasonably support the adoption of an alternate sewage treatment system which would be superior to direct connection to Council's reticulated sewer.

Based on the 79(C) assessment detailed in this Report, it is considered that the now proposed method of collection and disposal of sewage presents unacceptable and avoidable public health and environmental risks and as such, the proposal should not be approved.

Accordingly, the application seeking to modify the approval should be refused in accordance with the Draft Notice of Determination attached to this Report as Appendix 10.