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| **COUNCIL ASSESSMENT REPORT**  HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL | |

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| PANEL REFERENCE & DA NUMBER | PPSHCC-120  DA/226/2022 |
| PROPOSAL | Stage 2 Marina under Concept Approval MP 06\_0309 |
| ADDRESS | 81 Trinity Point Drive, 81D Trinity Point Drive, 49 Trinity Point Drive Morisset Park  Lot 101 DP 1256630, Lot 1 DP 1252681, Lot 32 DP 1117408 |
| APPLICANT | Johnson Property Group Pty Limited |
| OWNER | The State of NSW  Trinity Point Holdings8 Pty Ltd  Lake Macquarie City Council |
| DA LODGEMENT DATE | 18 February 2022 |
| APPLICATION TYPE | Development Application  Designated Development  Integrated Development |
| REGIONALLY SIGNIFICANT CRITERIA | Clause 7(b) Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021*: Marina (designated development) |
| CIV | $7,950,800 |
| CLAUSE 4.6 REQUESTS | N/A |
| KEY SEPP/LEP | * *State Environmental Planning Policy (Resilience and Hazards) 2021* * *State Environmental Planning Policy (Planning Systems) 2021* * *Lake Macquarie Local Environmental Plan 2014* |
| TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS | 62 submissions received, 18 in support and 44 in objection.  Matters in objection raised include:   * Pollution impacts – sewerage, boat maintenance, complaints hotline * Community consultation prior to lodgment of DA * Extension of break wall without protocols for water testing * Insufficient facilities or infrastructure to cater for the extension. |
| DOCUMENTS SUBMITTED FOR CONSIDERATION | **Plans**   * Stage 2 Marina Development Plans (November 2021)   **Reports and documentation**   * Secretary’s Environmental Assessment Requirements and compliance table (n.d.) * Environmental Impact Statement (February 2022) * Concept Plan Approval 06\_0309: Condition B1 Marina Design Review – Confirmation of satisfaction of condition (December 2021) * Concept Plan Approval 06\_0309: Condition C14(1) Evidence of 75% take up of berths (November 2021) * Concept Plan Approval 06\_0309: Condition 14(2) Summary of compliance with Stages 1A and 1B construction and operational management and environmental license conditions (n.d.) * Concept Plan Approval 06\_0309: Condition 14(3) Report on satisfactory environmental performance for Stage 1A and 1B (January 2022) * Navigation impact assessment (January 2022) * Marine ecology assessment report (January 2022) * Impact assessment for soil and water, flooding and coastal erosion (January 2022) * Noise and vibration impact assessment and construction noise management plan (February 2022) * Waste management plan (December 2021) * Air quality assessment (February 2022) * Traffic impact assessment (February 2022) * Visual impact assessment report (December 2021) * Community and agency engagement report (February 2022) * Geotechnical review (January 2022) * Disability access report (January 2022) * Construction and environmental management plan (September 2014) * Responsible boating practice manual (n.d.) * Marina operations manual (January 2022)   **Attachments**   * Appendix A – Concept Approval assessment * Appendix B – SEARs assessment * Appendix C – DCP assessment * Appendix D – Draft conditions |
| SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24) | N/A |
| RECOMMENDATION | Approval, subject to conditions of consent |
| DRAFT CONDITIONS TO APPLICANT | Yes |
| SCHEDULED MEETING DATE | 8 September 2022 |
| PREPARED BY | Nicole Sellen – Senior Development Planner |
| DATE OF REPORT | 1 September 2022 |

**EXECUTIVE SUMMARY**

The development application DA/226/2022 seeks consent for the Stage 2 Marina under Concept Approval MP 06\_0309 at Trinity Point, Morisset Park.

The subject site is across three parcels of land, being 81 Trinity Point Drive (land-based component), 81D Trinity Point Drive (leased waterway component) and 49 Trinity Point Drive (Council foreshore area). It is noted no works are proposed to the foreshore area at 49 Trinity Point Drive, however the proposed Stage 2 Marina will be accessed by the existing access gangways across the foreshore land.

The site currently contains an existing marina with 94 berths, car parking, marina officer and a temporary restaurant.

The site is located across three zonings, being W1 Natural Waterways, SP3 Tourist and RE1 Public Recreation. The proposed works are to primarily occur within the W1 Natural Waterways zone and additional minor retrofit works within the SP3 Tourist zone. The proposed marina extension is located within the W1 Natural Waterways and is permitted with consent pursuant to Clause 2.2 of the *Lake Macquarie Local Environmental Plan 2014* (*LMLEP 2014*).

The proposed development is tied to a concept approval (MP 06\_0309) of which provided approval for two stages of a marina at the site amongst other land based development. Stage 1 of the marina has been approved under DA/1503/2014 and constructed. The land-based development approved under the concept approval is yet to be developed however a temporary restaurant is in place. The land-based component is also subject to a State Significant Development Application which is soon to be submitted with the Department of Planning and Environment.

The proposal is designated development as the development is listed under Schedule 3, Part 2 of the *Environmental Planning and Assessment Regulation 2021* (*EP&A Reg 2021*). In accordance with the *EP&A Reg 2021* the applicant has undertaken an application to the Planning Secretary for environmental assessment requirements and received the Secretary’s Environmental Assessment Requirements (SEARs). The initial SEARs 1378 was issued on 18 September 2019 for Stage 2 of the marina and associated works including 94 berths. On 7 July 2021 an extension to the SEARs was granted. As part of the granting of an extension, it was established the original SEARs apply as well as the authority’s additional comments/requirements. The proposed development has adequately addressed the SEARs. An assessment against the SEARs has been provided under Appendix B.

The proposal is also integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979* (*EP&A Act 1979*)*.* The trigger being the proposed temporary construction compound at Rathmines Park, a State Heritage Register item, and the temporary use of the site does not meet the standard exemptions. A s60 approval from Heritage NSW has been provided.

The application was placed on public exhibition from 24 February 2022 to 31 March 2022, with 62 submissions being received, 18 in support and 44 in objection. The submissions in objection raised issues relating to pollution impacts, community consultation, extension to break wall, insufficient infrastructure and restricted public access along the foreshore. These issues are considered further in this report.

The application is referred to the Hunter and Central Coast Regional Planning Panel (the Panel) as the development is regionally significant development, pursuant to Section 2.19(1) and Clause (7)(b) of Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021* as the proposal is development for amarina.

Several briefings have been held for the application including a kick-off briefing on 31 March 2022, site inspection on 12 May 2022, and a final briefing on 4 August 2022 where key issues were discussed, including compliance with the concept approval, sea level rise and inundation and the heritage approval.

Initial review of the relevant concept approval conditions relating to the marina, identified the submitted application adequately satisfies all the preconditions, excluding Condition C12(2)(d). The applicant submitted additional information which addressed the outstanding condition and thus suitably demonstrated compliance with all relevant concept approval preconditions. An assessment of the concept approval conditions can be found at Appendix A.

The issue of sea level rise and inundation has been considered and the proposal deemed acceptable for the purposes of this application. It is recognised that as being development on the lake, the proposal and site are both subject to sea level rise impacts. The proposed marina design is for a 25-year asset life, of which is within the projected sea level rise and flooding scenarios for a 1 in 100 average recurrence interval (ARI) events. Council are satisfied the proposed marina and access gangways are adaptable to the future sea level rise impacts.

The existing marina has undergone ongoing water quality monitoring for the duration of the construction and ongoing operations and testing and results are provided to the Environmental Protection Agency (EPA) and public on a monthly basis. As a precondition within the Concept Approval, Stage 2 of the marina cannot be applied for or approved unless it can be demonstrated there are no adverse impacts from the design or operation of a marina and there is suitable demand. These preconditions have been assessed within the Concept Approval (refer to Appendix A) and considered satisfactory. Alongside demonstrating the proposal will not result in adverse environmental or amenity impacts, it has been suitably demonstrated the proposal will generate positive social and economic impacts to the locality and the Lake Macquarie region. The proposal is considered to be in the public interest for these reasons.

Following consideration of the matters for consideration under Section 4.15(1) of the *EP&A Act*, the provisions of the relevant State Environmental Planning Policies, the Concept Approval under MP 06\_0309 and the SEARs, the proposal can be supported and is recommended for approval subject to conditions of consent (as presented in Appendix D).

1. **THE SITE AND LOCALITY**

The site, commonly known as Trinity Point, is located on the western side of Lake Macquarie, bound by Bardens Bay.

The site is across two allotments, 81 Trinity Point Drive which is the land-based component, and 81D Trinity Point Drive which is the marina lease area. The site is bound by the lake to the north, east and west (refer to Figure 1).

The surrounding locality of Morisset Park, Brightwaters, Windermere Park and Bonnells Bay primarily consists of low density residential development.



**Figure 1 - Site locality**

The site currently contains a temporary restaurant facility, marina office and marina amenities, marina and restaurant car parking, a waste storage area and stage 1 of the marina which comprises 94 berths and refuelling facilities (refer to Figure 2).



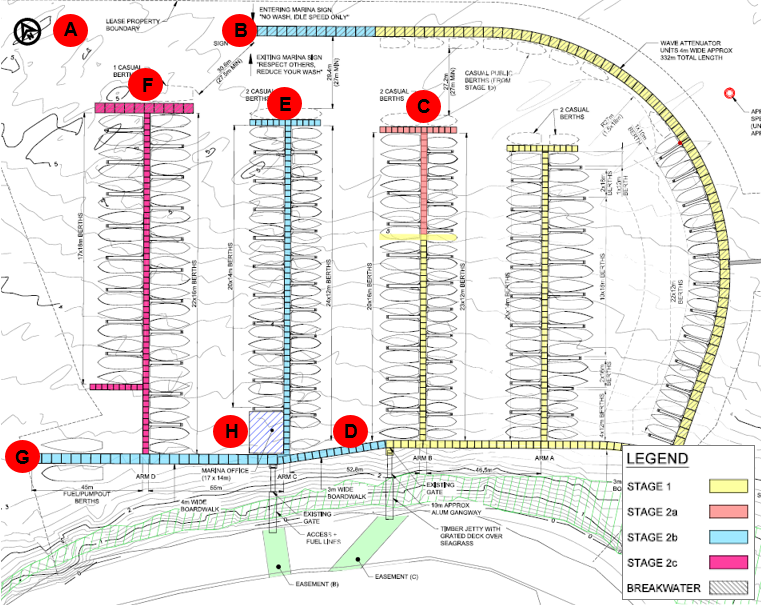
**Figure 2 - Existing uses and structures**

1. **THE PROPOSAL AND BACKGROUND** 
   1. **The Proposal**

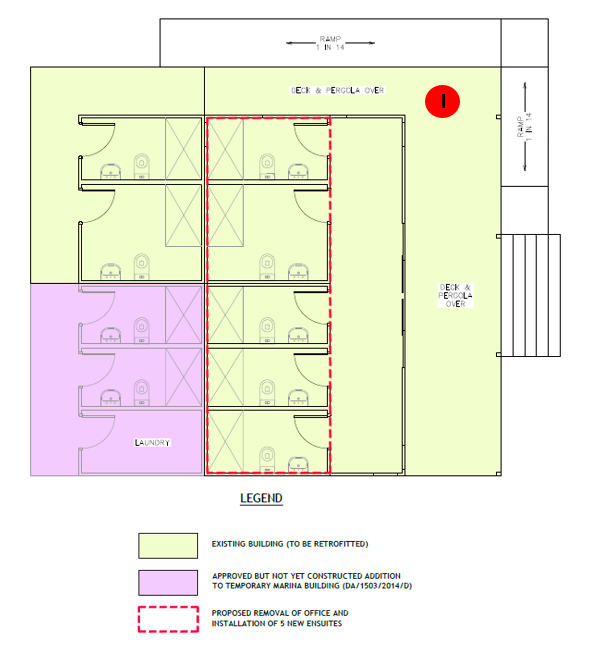
The proposal is for stage 2 of the marina approved under Concept Approval MP 06\_0309 which seeks to establish an additional 94 berths to achieve the total 188 berth capacity approved under the Concept Plan. Works to achieve this include the following:

* Extension to the existing floating breakwater/wave attenuator (‘B’ in Figure 3)
* Extension to the existing Arm B (‘C’ in Figure 3)
* An extension of the landward boardwalk (‘D’ in Figure 3)
* Construction of new Arm C (‘E’ in Figure 3)
* Construction of new Arm D (‘F’ in Figure 3)
* Re-orientation and extension of the existing fuel and wastewater pump out jetty (‘G’ in Figure 3)
* Establishment of a floating marina office at the south western end of Arm C (‘H’ in Figure 3)
* Retrofit the existing land based temporary marina office to provide an additional five ensuites for marina users (‘I’ in Figure 4).

The proposed stage 2 marina provides the flexible option for sub-staging (stage 2a, 2b and 2c). Refer to Figure 3 and 4 for corresponding works.



**Figure 3 - Proposed Stage 2 Marina**



**Figure 4 - Proposed marina office retrofit**

* 1. **Background**

A pre-lodgement meeting was held prior to the lodgement of the applicant on 7 December 2021 where various issues were discussed. A summary of the key issues and how they have been addressed by the proposal is outlined below:

* Issue 1 - Compliance with concept approval conditions

The applicant has provided the necessary documentation to satisfactorily address the relevant concept approval conditions to establish the appropriateness for carrying out stage 2 of the marina. An assessment of the proposed development against the concept approval conditions is provided in Appendix A of this report.

* Issue 2 - Car parking

The applicant has submitted a separate application under DA/1494/2018/E which sought to established an additional 95 temporary car parking spaces purposed for the temporary restaurant on site. This enables the marina car park (west of the temporary restaurant) to be restored to marina users only upon completion of the stage 2 marina works.

* Issue 3 - Use of Rathmines Park

The applicant has liaised with Council’s Property Department and obtained consent for temporary use of Rathmines Park. Consent was received in a letter dated 15 August 2022 to utilise for a s60 application through Heritage NSW.

The development application was lodged on 18 February 2022. A chronology of the development application since lodgement is outlined below including the Panel’s involvement (briefings, deferrals, etc) with the application is outlined in Table 1.

**Table 1: Chronology of DA**

| **Date** | **Event** |
| --- | --- |
| 18 February 2022 | DA lodged |
| 24 February 2022 - 31 March 2022 | Exhibition of the application |
| 31 March 2022 | Kick-off briefing with Panel |
| 12 May 2022 | Site inspection briefing with Panel |
| 20 May 2022 | Information request issued to applicant |
| 31 May 2022 | Applicant response to information request received |
| 4 August 2022 | Briefing with Council and Panel followed by public briefing |

* 1. **Site History**

**Concept Approval 06\_0309**

The Concept Approval was granted by the NSW Minister for Planning and Public Spaces on 5 September 2009 for the following (as modified):

* 188-berth marina and associated facilities
* Helipad
* 315 accommodation units (tourism and residential with no more than 50% to be used for residential purposes)
* Restaurant (200 seats) and outdoor dining, café, function centre (300 seats), shops and office
* Parking and landscaping.

**DA/2014/1503/D – Stage 1 Marina**

Development consent was granted by the Hunter and Central Coast Regional Planning Panel in June 2015 for the construction of stage 1 of the marina, which included:

* Construction of main gangway and jetty connection to the marina structure
* Construction of stage 1 extent of floating boardwalk (generally parallel to shore)
* Construction of stage 1 extent of floating breakwater and associated pens
* Construction of floating pontoon Arm A and associated pens and ‘T’ head
* Construction of stage 1 extent of floating pontoon Arm B and associated pens and ‘T’ head
* Provision of 94 berths, plus casual public berthing
* Construction of gangway and jetty connection to fuel pontoon
* Construction of separate fuel and wastewater pump out pontoon and installation of dispenser and discharge units, connected to land-based infrastructure
* Construction of support piling
* Installation of security provisions on the marina structure (including a gate and CCTV)
* Installation of services (water, power, lighting, fire hose reels) to pedestals and berths
* Construction of works in foreshore reserve (pathway, retaining, landscaping and vegetation management)
* Construction of site accessway and marina car park (54 car spaces, noting stage 1 only requires 31 spaces) including underground fuel storage tanks and hydrocarbon separator device and stormwater management infrastructure
* Installation of associated utility infrastructure as required to connect and service the marina
* Construction of a temporary screened storage area within the marina car park (over four car park spaces) including storage for operational requirements (emergency equipment, waste, bulk waste and similar)
* Construction of a temporary marina building to the edge of the marina carpark, facing the foreshore and marina, including a marina office, chandlery and lounge and two ensuites (one accessible).

The layout of stage 1 is shown in Figure 3.

**DA/1494/2018/E – Temporary restaurant**

The site currently contains a temporary restaurant, known as 8 at trinity. The restaurant operates under a temporary consent which allows indoor and outdoor dining. The temporary nature of the use is supported by a time limited consent which is set to expire 6 November 2028.

**State Significant Development – Mixed use development**

Separate to the existing DAs for the site, a State Significant Development Application (SSDA) is in the process of being prepared which will seek approval for mixed-use tourist, hospitality and residential development. The SSDA will not impact the existing marina or proposed stage 2. The marina once fully completed will operate in tandem with the SSDA if the SSDA is approved.

1. **STATUTORY CONSIDERATIONS**

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *EP&A Act*. These matters as are of relevance to the development application include the following:

1. *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*

*(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 Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

*(iii)  any development control plan, and*

*(iiia)  any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*

*(iv)  the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*

*that apply to the land to which the development application relates,*

1. *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
2. *the suitability of the site for the development,*
3. *any submissions made in accordance with this Act or the regulations,*
4. *the public interest.*

These matters are further considered below.

It is noted the proposal is designated development (s4.10) and integrated development under the *Heritage Act 1977*. These legislatively provisions are considered further in this report.

* 1. **Designated development**

The development proposal is designated development under Schedule 3 – Designated Development of the *EP&A Reg 2021*.

***32******Marinas and related land and water shoreline facilities***

*(1)  Development for the purposes of a marina or related facility is designated development if the marina or facility has an intended capacity of—*

*(a)  15 or more vessels with a length of 20 metres or more, or*

*(b)  80 or more vessels of any length.*

*(2)  Development for the purposes of a marina or related facility is designated development if —*

*(a)  the marina or facility has an intended capacity of 30 or more vessels of any length, and*

*(b)  the marina or facility—*

*(i)  is located in non-tidal waters or within 100 metres of a wetland or aquatic reserve, or*

*(ii)  requires the construction of a groyne or annual maintenance dredging, or*

*(iii)  has a ratio of car park spaces to vessels of less than 0.5:1.*

*(3)  Development for the purposes of a boat repair or maintenance facility is designated development if the facility has an intended capacity of—*

*(a)  1 or more vessels with a length of 25 metres or more, or*

*(b)  5 or more vessels of any length at any one time.*

*(4)  In this section—*

***boat repair or maintenance facility****means a facility at which vessels are repaired or maintained out of the water and includes slipways, hoists or other facilities.*

***related facility****means a land or water shoreline facility that moors, parks or stores vessels, excluding rowing boats, dinghies or other small craft—*

*(a)  at fixed or floating berths or freestanding moorings, or*

*(b)  alongside jetties or pontoons, or*

*(c)  within dry storage stacks or on cradles on hardstand areas.*

Part 8, Division 2 of the *EP&A Reg 2021* lists environmental assessment requirements for designated development. The applicant has undertaken an application to the Planning Secretary for environmental assessment requirements and received the SEARs. The initial SEAR 1378 was issued on 18 September 2019 for stage 2 of the marina and associated works including 94 berths. On 7 July 2021 an extension to the SEARs previously issued was granted. As part of the granting of an extension, it was established the original SEARs apply as well as the authority’s comments/requirements. An assessment against the SEARs has been provided under Appendix B.

* 1. **Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations**

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

1. **Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments**

The following Environmental Planning Instruments (EPIs) are relevant to this application:

* *State Environmental Planning Policy (Planning Systems) 2021*
* *State Environmental Planning Policy (Resilience and Hazards) 2021*
* *Lake Macquarie Local Environmental Plan 2014*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in Table 2 and considered in more detail below.

**Table 2: Summary of applicable Environmental Planning Instruments**

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| **EPI** | **Matters for Consideration** | **Comply (Y/N)** |
| State Environmental Planning Policy (Planning Systems) 2021 | Referred to Panel under Schedule 6, Item 7(b) of the Planning Systems SEPP: Particular designated development, being a marina.  Particular designated development, being a marina.  *7   Particular designated development*  *(1)  Development for the purposes of—*  *(b)  marinas or related facilities that meet the requirements for designated development under the Environmental Planning and Assessment Regulation 2021, Schedule 3, section 32, or* | Y |
| SEPP (Resilience and Hazards) | Chapter 2: Coastal Management   * Section 2.10(1) & (2) - Development on land within the coastal environment area * Section 2.11(1) - Development on land within the coastal use area * Section 2.12 - Development in coastal zone generally —development not to increase risk of coastal hazards. * Section 2.13 - Development in coastal zone generally - coastal management programs to be considered.   Chapter 3 – Hazardous and offensive development   * Not considered applicable as no changes to existing underground fuel tanks are proposed. | Y |
| Lake Macquarie Local Environmental Plan | * Clause 2.3 – Permissibility and zone objectives * Clause 4.3 – Height of buildings * Clause 5.7 – Development below mean high water mark * Clause 5.10 – Heritage conservation * Clause 5.21 – Flood planning * Clause 7.1 - Acid sulfate soils * Clause 7.16 – Development on certain land at Trinity Point, Morisset Park * Clause 7.21 – Essential services | Y |

**State Environmental Planning Policy (Planning Systems) 2021**

The proposal is regionally significant development pursuant to Section 2.19(1) as it satisfies the criteria in Clause 7(b) of Schedule 6 of the Planning Systems SEPP; the proposal is development for a marina.

Accordingly, the Hunter and Central Coast Regional Planning Panel is the consent authority for the application.

**State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 2 Coastal Management**

The site has been identified as being within a coastal environment area and coastal use area.

The aim of this Chapter is to 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*, including the management objectives for each coastal management area, by—

1. managing development in the coastal zone and protecting the environmental assets of the coast, and
2. establishing a framework for land use planning to guide decision-making in the coastal zone, and

(c)  mapping the 4 coastal management areas that comprise the NSW coastal zone for the purpose of the definitions in the Coastal Management Act 2016.

An assessment against Division 3 Coastal environmental area, Division 4 Coastal use area, and Division 5 General has been undertaken in Table 3, 4 and 5 respectively, as below.

**Table 3 - Coastal Environmental Area**

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| SEPP requirement | Comments |
| 2.10 Development on land within the coastal environment area  (1)  Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following— | |
| (a)  the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment | The Concept Approval (06\_0309) included conditions of consent to which the applicant needs to demonstrate environmental impacts from the construction of the stage 1 marina and ongoing impacts.  The findings within the submitted Impact Assessment for Soil and Water, Flooding and Coastal Erosion (Appendix K of submitted application), and Marina Ecology Assessment Report (Appendix J of submitted application) demonstrate stage 1 of the marina did not result in impacts to the integrity and resilience of the biophysical, hydrological and ecological environment.  Based on the above-mentioned findings, stage 2 of the marina is not considered to exacerbate existing arrangements. |
| (b)  coastal environmental values and natural coastal processes  (c)  the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1 | Monitoring of stage 1 of the marina indicates negligible impact on water quality, flooding and coastal erosion. |
| (d)  marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms | The submitted Marine Ecology Assessment Report concludes stage 2 of the marina is acceptable in terms of aquatic ecology considerations.  Recommendations have been included in relation to seagrass and ongoing monitoring. These recommendations form part of the recommended conditions of consent. |
| (e)  existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability | There are no changes proposed to the existing public open space and access along the foreshore. The existing gangway to the marina will remain as is and will service the proposed marina extension. |
| (f)  Aboriginal cultural heritage, practices and places | No foreshore works are proposed. |
| (g)  the use of the surf zone | N/A |
| (2)  Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that— | |
| (a)  the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or  (b)  if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or  (c)  if that impact cannot be minimised—the development will be managed to mitigate that impact. | The proposal is for an extension to an existing marina. The submitted Impact Assessment for Soil and Water, Flooding and Coastal Erosion (Appendix K of submitted application) and Marina Ecology Assessment Report (Appendix J of submitted application) provides assurance the design and siting of both the existing stage 1 marina and proposed extension are appropriate and do not result in adverse impact to the area raised in subsection 1.  The proposed is not considered to result in adverse impacts. |

**Table 4 - Coastal Use Area**

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| SEPP requirement | Comment |
| 2.11 Development on land within the coastal use area  (1)  Development consent must not be granted to development on land that is within the coastal use area unless the consent authority— | |
| (a)  has considered whether the proposed development is likely to cause an adverse impact on the following—  (i)  existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability  (ii)  overshadowing, wind funnelling and the loss of views from public places to foreshores  (iii)  the visual amenity and scenic qualities of the coast, including coastal headlands  (iv)  Aboriginal cultural heritage, practices and places  (v)  cultural and built environment heritage | The proposed stage 2 of the marina will not alter existing foreshore access.  The proposed development will not result in overshadowing, wind funnelling or loss of views from public places to foreshores.  The proposed development will not impact the visual amenity of the area. The proposal is for an extension to an existing marina.  The proposed development will not impact Aboriginal cultural heritage, practices and places.  The proposed development will not impact cultural and built environment heritage. |
| (b)  is satisfied that—  (i)  the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or  (ii)  if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or  (iii)  if that impact cannot be minimised—the development will be managed to mitigate that impact, and | The proposal is suitably design and sited to avoid adverse impacts to the items referred to in paragraph (a) above. |
| (c)  has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development. | The proposal is for an extension to an existing marina. The proposed bulk and scale is consistent for the type of development. |

**Table 5 - General**

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| SEPP requirement | Comment |
| 2.12   Development in coastal zone generally—development not to increase risk of coastal hazards | |
| Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. | It is considered the application has adequately demonstrated the proposed development will not cause increased risk of coastal hazards on the adjoining land or other land. |
| 2.13   Development in coastal zone generally—coastal management programs to be considered | |
| Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land. | There are no coastal management programs applicable to the site.  Coastal management is to be carried out in accordance with this SEPP. |

**State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 3 Hazardous and offensive development**

The proposal seeks to rotate the existing fuel/pump out arm. Despite this, the storage location of the underground fuel tanks will remain as is, and therefore the proposal is not considered potentially hazardous or potentially offensive development.

**Lake Macquarie Local Environmental Plan 2014**

The relevant local environmental plan applying to the site is the *Lake Macquarie Local Environmental Plan 2014* (*LMLEP 2014*). The aims of the LEP include:

*(aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*

1. *to recognise the importance of Lake Macquarie and its waterways, including the coast, as an environmental, social, recreational and economic asset to Lake Macquarie City and the Hunter and Central Coast regions,*
2. *to implement a planning framework that protects areas of significant conservation importance, while facilitating development and public facilities in appropriate areas, that are accessible to a range of population groups, to accommodate Lake Macquarie City’s social and economic needs,*
3. *to promote the efficient and equitable provision of public services, infrastructure and amenities,*
4. *to facilitate a range of accommodation types throughout Lake Macquarie City so that housing stock meets the diversity of community needs and is affordable to as large a proportion of the population as possible,*
5. *to apply the principles of ecologically sustainable development,*
6. *to encourage development that enhances the sustainability of Lake Macquarie City, including the ability to adapt to and mitigate against climate change.*

The proposal recognises the importance of Lake Macquarie’s waterway as an environmental, social, recreational and economic asset to the adjoining coastal regions. The proposed development has satisfactorily addressed the SEARs (refer to Appendix B of this report) which demonstrates due consideration made towards environmental impacts. The proposal has also satisfactorily demonstrated the positive social, recreational and economic impacts brought to the region through examples of the existing stage 1 marina and the collaborative use with the temporary restaurant on site which acts as an anchor tourist location. The marina itself has been designed to a certain asset life however can be adapted in the future to address climate change and sea level rise. Pursuant to the above, the proposal is considered to align with the objectives of the *LMLEP 2014*.

**Zoning and permissibility (Part 2)**

The site is located within the W1 Natural Waterways zone and SP3 Tourist zone (refer to Figure 5) pursuant to Clause 2.2 of the *LMLEP 2014*. Existing access to the marina is through the RE1 Public Recreation zone. There are no proposed works within the RE1 zone.



**Figure 5 - Zoning Map**

According to the definitions in Clause 4 (contained in the dictionary), the proposal satisfies the definition of marina which is a permissible use with consent in the Land Use Table in Clause 2.3 for the W1 Natural waterways zone and SP3 Tourist zone.

The W1 Natural waterways zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

* *To protect the ecological and scenic values of natural waterways.*
* *To prevent development that would have an adverse effect on the natural values of waterways in this zone.*
* *To provide for sustainable fishing industries and recreational fishing.*
* *To provide for the recreational use of Lake Macquarie and its waterways as an important environmental, social and economic asset, including maintenance or enhancement of public navigation channels to a depth suitable for yachting and other boating activities.*

The proposal is considered to be consistent with these zone objectives as follows:

* Supporting information has been provided to demonstrate the works and ongoing operation will not adversely impact the ecological value of the lake, and
* The proposed marina extension is considered a social and economic asset to the lake and will aid in facilitating the recreational use of Lake Macquarie.

The SP3 Tourist zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

* *To provide for a variety of tourist-oriented development and related uses.*
* *To encourage tourism development that is sensitively designed to enhance and complement its location and that avoids unacceptable adverse impacts on the environment.*
* *To preserve land for tourism by limiting and discouraging development and uses that are not tourist-related.*

The proposed marina extension will encourage tourism by means of provision of casual berths to draw people to the locality. A number of submissions submitted have provided support to this affect, noting the extension will increase tourism to the Trinity Point location and land-based offerings which currently includes the temporary restaurant.

**General Controls and Development Standards (Part 2, 4, 5 and 6)**

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in Table 6 below.

The proposal is considered to be generally consistent with the LEP.

**Table 6: Consideration of LEP Controls**

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Requirement** | **Proposal** | **Comply** |
| Height of buildings  (Cl 4.3(2)) | 8.5 metres for W1 zone  16 metres for SP3 zone | The height of the marina extension will reflect the height of the existing stage 1 marina.  Land based works are retrofit works only, and there is no increase to building heights.  All works will be within the permitted building height. | Y |
| Development below mean high water mark (Cl 5.7) | Approval is required to carry out work below the mean high water mark. | Approval is sought in accordance with this condition. | Y |
| Heritage  (Cl 5.10) | Conserve the environmental heritage of Lake Macquarie, heritage significance of heritage items or conservation areas, archaeological sites and Aboriginal objects and places of Aboriginal heritage significance. | The proposed marina will be located on the water, proposing only water-based works.  Land-based works are contained to retrofit works within the existing marina office building.  Previous heritage studies for the site and locality have identified land based archeological sites. The proposed works are not located within close proximity to these sites.  It is noted the proposed temporary construction compound is located within Rathmines Park, which is on the State Heritage Register. Approval from Heritage NSW has been provided. | Y |
| Flood planning (Cl 5.21) | Development should:   * Be compatible with flood function and behaviour * Not adversely affect the flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties * Not adversely affect the safe occupation and efficient evacuation of people | The proposed marina is a floating structure and therefore considered to be compatible with flood function and behaviour.  The structure is not considered to adversely affect flood behaviour by means of causing detrimental impact to adjoining development or properties. | Y |
| Acid sulphate soils  (Cl 7.1) | The land and lake is mapped as class 1 acid sulfate soils, where ‘any works’ require an acid sulfate soils management plan to be submitted. | An acid sulfate soil management plan has been prepared as part of the stage 1 marina application.  The acid sulfate soil management plan also included samples and borehole logs within the development area for stage 2 of the marina and the plan can be utilised for stage 2 of the marina.  The applicant has indicated that works below the ground level will not occur and a new acid sulphate soil assessment for the site is not required. | Y |
| Development on certain land at Trinity Point, Morisset Park (Cl 7.16) | Requirements apply to residential accommodation and commercial premises as part of a facility for tourists | This clause is not applicable to this proposal. | N/A |
| Essential Services (Cl 7.21) | Development consent must not be granted unless the consent authority is satisfied that any of the following services that are essential for the development are available:  (a)  the supply of water,  (b)  the supply of electricity,  (c)  the disposal and management of sewage,  (d)  stormwater drainage or on-site conservation,  (e)  suitable vehicular access. | The site has access to electricity, telecommunications, reticulated water and sewer to service the development. | Y |

1. **Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments**

A number of draft SEPPs relevant at the time of lodgement of the application have now been enforced and these have been assessed under the respective EPIs.

1. **Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan**

The following Development Control Plan is relevant to this application:

* *Lake Macquarie Development Control Plan 2014* ( *LM DCP*)

Under the provisions of the *LM DCP* it is considered Part 6 Development in Recreation and Tourists Zones applies due to the land based retrofit works, and Part 11 / 11.5 Rathmines RAAF Based Heritage Precinct applies due to the temporary construction compound at Rathmines Park.

There is no applicable DCP for works within the W1 Natural Waterways zone.

The proposal is generally consistent with the controls listed under Part 6 and 11 of the DCP. There are no items of importance or concern to note. An assessment against Part 6 and 11 of the DCP is provided within Appendix C of this report.

The following contributions plans are relevant pursuant to Section 7.18 of the *EP&A Act* and have been considered in the recommended conditions:

* Lake Macquarie City Council Section 7.12 Development Contributions Plan

1. **Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the *EP&A Act***

There have been no planning agreements entered into and there are no draft planning agreements proposed for the site.

1. **Section 4.15(1)(a)(iv) - Provisions of Regulations**

Part 4 Division 1 of the *EPA Reg* contains additional matters that must be taken into consideration by a consent authority in determining a development application.

There are no prescribed matters relevant to the application for consideration.

* 1. **Section 4.15(1)(b) - Likely impacts of development**

The likely impacts of development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered.

In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP, DCP controls and other relevant planning legislation are outlined above and in the Key Issues section below.

Accordingly, it is considered the proposal will not result in any significant adverse impacts.

* 1. **Section 4.15(1)(c) - Suitability of the site**

The proposal has been assessed as being suitable for the site for the following reasons:

* The proposal is generally consistent with the marina layout in accordance with the approved Concept Plan.
* The proposed stage 2 marina has demonstrated compliance with the relevant Concept Approval conditions which includes demonstration of negligible water and ecology impacts from the construction of stage 1 of the marina and the ongoing operation, as well as the demand for additional berths.
* The proposed stage 2 marina fits the locality, being within a natural waterway zone adjoining an existing marina and adjoining a tourism zone, and which has demonstrated itself as a tourism anchor by both land and lake.
* There are adequate services and infrastructure to cater for the additional 94 berths.
* The proposal has been designed with consideration made to current and future flooding and sea level rise impacts, with the marina itself and accessways adaptable for necessary change in the future.
  1. **Section 4.15(1)(d) - Public Submissions**

These submissions are considered in Section 5 of this report.

* 1. **Section 4.15(1)(e) - Public interest**

The stage 2 marina proposal is in the public interest for the following reasons:

* Potential impacts to the water quality, aquatic ecology, traffic and noise have been assessed as having minimal impacts with recommended management measures as part of the recommended conditions of consent.
* The proposed development is consistent with the relevant State and local legislation.
* The proposed development will not impact the health or safety of the public.
* The proposed development will provide economic benefits by means of job creation throughout the construction period and ongoing operation, in addition to drawing more recreational boat users on the lake and beyond the site, where a temporary restaurant operates.
* The proposed development will provide social benefits through the creation of additional berths and casual berths to enhance recreational use of the lake.
* The proposed development is consistent with the strategic direction for the Hunter and Lake Macquarie region, namely through private investment generating positive economic and social benefits for the region.
* The proposed development forms part of a larger plan for the site and will be a long-term asset to the lake.

1. **REFERRALS AND SUBMISSIONS** 
   1. **Agency referrals and concurrence**

The development application has been referred to various agencies for comment / concurrence / referral as required by the *EP&A Act* and outlined below in Table 7.

**Table 7: Concurrence and referrals to agencies**

|  |  |  |  |
| --- | --- | --- | --- |
| **Agency** | **Concurrence /**  **referral trigger** | **Comments**  **(Issue, resolution, conditions)** | **Resolved** |
| Concurrence Requirements (s4.13 of EP&A Act) | | | |
| Nil | | | |
| Referral / consultation agencies | | | |
| Nil | | | |
| Integrated Development (S 4.46 of the EP&A Act) | | | |
| Heritage NSW | Approval in respect of the doing or carrying out of an act, matter or thing referred to in s 57(1) | The proposal seeks to utilise Rathmines Park, which is listed on the State Heritage Register, as a temporary construction compound.  Heritage NSW provides a list of standard exemptions, of relevance standard exemption 12 permits temporary structures however the temporary structure must not be erected for more than 30 consecutive calendar days. The proposed temporary construction compound will be present on site for three to four months and therefore does not qualify as an exemption.  Pursuant to s4.46 of the *EP&A Act* 1979, approval from Heritage NSW as an integrated authority is required.  Subsequently a s60 approval has been provided by Heritage NSW. | Y |

* 1. **Council officer referrals**

The development application has been referred to various Council officers for technical review as outlined Table 8.

**Table 8: Consideration of Council referrals**

|  |  |  |
| --- | --- | --- |
| **Officer** | **Comments** | **Resolved** |
| Engineering | Council’s Development Engineer has reviewed the proposal against geotechnical, cut and fill, acid sulfate soils, stormwater management, natural water systems, traffic and transport and parking design considerations.  The proposal has been considered satisfactory against these considerations.  A recommendation for management of parking areas for the marina and restaurant has been suggested and is included in the draft conditions of consent. | Y |
| Traffic | Council’s Traffic Engineer does not raise any objections to the proposal on traffic related matters and is satisfied the traffic impacts from the proposal should not adversely affect local traffic. | Y |
| Building | Council’s Building Surveyor has reviewed the proposal and raised no objections. | Y |
| Waste | Council’s Waste Officer has reviewed the existing waste management arrangements and proposed waste management arrangements and is satisfied there are suitable provisions in place to manage the increased - generation of waste. | Y |
| Heritage | Aboriginal  Council’s Heritage Development Planner has reviewed the proposal and notes the site was previously assessed for Aboriginal heritage as part of the Concept Approval and stage 1 of the marina, which included the preparation of an Aboriginal Cultural Heritage Assessment Report, and Aboriginal Heritage Impact Permits (AHIPs) associated with works on land.  The current application relates to works within the lake, and the pontoons will be on piles, which will be drilled and hammer driven into place, with no works proposed on-shore.  No further aboriginal heritage assessment is required at this point.  European  Council’s Heritage Development Planner has reviewed the submitted Statement of Heritage Impacts (SoHI) and notes the proposal does not meet the standard exemption criteria albeit is in agreeance with the SoHI that impacts to Rathmines Park from the temporary construction compound are negligible.  Accordingly, a s60 integrated development approval has been obtained from Heritage NSW for these works. | Y |
| Landscape | Council’s Landscape Development Planner has reviewed the submitted visual impact assessment and raises no concerns. | Y |
| Erosion and sediment control | Council’s Erosion and Sediment Control Officer has reviewed the proposal and notes that due to the type of works, no concerns are raised. | Y |
| Social impact | Council’s Social Planner has reviewed the proposal and has noted social impacts of the marina were considered and assessed as part of the Concept Approval for the proposal.  As this development application is in accordance with the Concept Approval there are no additional social impact considerations associated with the proposal. | Y |
| Ageing and disability | Council’s Ageing and Disability Officer has reviewed the proposal and raises no concern. | Y |
| Environmental management (Noise) | Council’s Environmental Management Officer has reviewed the submitted noise assessment and is satisfied the ongoing operation of marina will not result in adverse noise impacts.  There is potential for noise impacts from construction works, particularly the pile driving activities. The submitted noise assessment provides recommendations for the construction noise. Whilst this is acceptable for DA purposes, a condition of consent is recommended requiring a specific construction noise management plan to be provided. | Y |
| Lake/foreshore and coastal protection | Council’s Environmental Strategy Officer has reviewed the submitted documentation against the relevant Concept Approval condition, the biodiversity criteria listed within the SEARs and Chapter 2 Coastal Management of the *State Environmental Planning Policy (Resilience and Hazards) 2021*.  The proposal is considered to have satisfactorily addressed the pre-conditions set out by the Concept Approval, the biodiversity criteria set out by the SEARs, and the SEPP coastal management criteria.  The application for stage 2 of the marina has adequately addressed the proposed works for the marina, and identified they will not result in adverse impacts on the marine environment.  Adequate mitigation measures for the construction and operation of the marina will be put in place. Ongoing monitoring is also proposed to be undertaken to ensure there are no significant adverse impacts created by the proposal. | Y |
| Air quality | Council’s Environmental Systems Officer has reviewed the submitted air quality assessment and is satisfied the proposed development presents negligible risks to exceeding relevant air quality criteria.  Council’s Environmental Systems Officer has also recognised the marina operates under an existing Environmental Protection Licence (EPL) of which includes conditions relevant to air quality.  A condition of consent is recommended to ensure the existing EPL is modified to include stage 2 of the marina. | Y |
| Climate Change (sea level rise) | Council’s City Resilience Officer has reviewed the proposal and is satisfied with the proposal, subject to compliance with condition C21 Flooding, of the Concept Approval.  Stage 2 of the marina has been designed to replicate the levels of stage 1 which has been designed in accordance with C21. This results in pile cap levels of 2.36m AHD.  It is noted that discussions have been held with Council’s City Resilience Officer for climate change and sea level rise impacts regarding the asset life of the marina and projected flooding/sea level rise impacts for the next 50 and 100 years. Based on the discussions held, Council are satisfied the proposed 25-year marina asset life is suitable and there are sufficient provisions available for the marina to adapt pile heights to address future sea level rise.  Council are also satisfied there is sufficient space within the Council reserve for the access gangway to be extended in the future to respond to sea level rise.  These adaption provisions will be assessed in future applications for the marina. | Y |

The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

* 1. **Community Consultation**

The proposal was notified in accordance with Part 3, Division 5, Section 58 of the *EPA Reg* (designated development exhibition requirements) and Council’s Community Participation Plan, from 24 February 2022 until 31 March 2022.

The notification included the following:

* A sign placed on the site
* Notification letters sent to adjoining and adjacent properties (703 properties notified)

The Council received a total of 62 unique submissions, comprising 44 objections and 18 submissions in favour of the proposal. The issues raised in these submissions are considered in Table 9.

**Table 9: Community submissions**

|  |  |
| --- | --- |
| **Issue** | **Council comments** |
| Pollution impacts:   * Sewage * Boat maintenance * Complaints hotline | The Trinity Point Marina Operations Manual (adopted with stage 1 of the marina) will continue to be implemented which includes controls for cleaning and maintenance, wastewater and pump out. This manual has been designed in accordance with the NSW Marina Pollution Regulations of which prohibits the discharge of untreated sewage.  There is a sewage pump out system within the marina (located on the fuel/sewer pump out jetty) meaning there are facilities within the marina to capture sewage waste should boats berthed within the marina require.  Notwithstanding the implementation of the manual, there are state and local regulations in place to protect the environment and control discharge from vessels and pollution of the waterways. If a vessel operator pumps out its holding tanks into the waters of Lake Macquarie, they are in breach of the Marine Pollution Act (MPA) and the Transport for NSW – Boating Handbook.  In accordance with the EPL for the site a telephone complaints line has been made available with details of this telephone line on the Trinity Point Marina website. |
| Community consultation prior to lodgement of DA | The proponent engaged a community consultation expert, SecNewgate, to aid in them undertaking appropriate community consultation in accordance with the SEARs.  A Community and Agency Engagement Report was submitted with the application and outlines in detail the level of consultation undertaken and areas for which door knocking was undertaken. The documentation notes the engagement was undertaken concurrently for both the marina extension and separate SSDA.  The submitted Community and Agency Engagement Report included the community newsletter which was circulated and included reference to the proposed stage 2 of the marina.  Council are satisfied suitable community consultation has been undertaken in accordance with the SEARs. |
| Extension of break wall without protocols for water testing | Alterations to the approved concept layout, including extension to break wall have been made in response to Concept Approval condition B1, which requires the marina design to be reviewed to ensure a number of performance criteria are met.  The revised design in response to meeting the performance criteria listed has been submitted to the Department of Planning and Environment and approval obtained. The layout was approved as being generally consistent with the approved layout. Council concurs with this decision and is satisfied the development is consistent with the Concept Approval. |
| Insufficient facilities or infrastructure to cater for the extension | Council’s Traffic Engineer has reviewed the submitted traffic report and is satisfied the development will have negligible impacts to the existing road network.  Additionally, the existing marina car park provides provision for 50 car spaces. An additional row of 15 car parking spaces are provided in front of the temporary restaurant, and further 95 car parking spaces provided south of the restaurant. The car parking area for the restaurant currently provides a surplus to the requirement.  Council are satisfied there is sufficient car parking to cater for the proposed stage 2 marina extension. |
| Restricted public access along the foreshore | The public will maintain existing access along the foreshore as there are no changes to the existing gangways.  The applicant has demonstrated there is sufficient clearance beneath the existing gangway, lake and foreshore area for kayakers and stand up paddleboarders to manoeuvre along the foreshore. |

1. **KEY ISSUES**

The following key issues are relevant to the assessment of the application having considered the relevant planning controls and the proposal in detail.

* 1. **Compliance with relevant Concept Approval conditions**

Initial feedback from Council’s Lake and Foreshore/Coastal Protection Officer found the relevant conditions of the Concept Approval (as modified), being conditions B2, C12, C13, C14 have generally been satisfied, excluding C12 (2)(d) which had not been addressed. These conditions relate to:

* Marina staging
* Final marina design
* Stage 1 – Marina environmental performance monitoring
* Stage 2 – Marina

The applicant demonstrated compliance with C12(2)(d) in the response to information request.

Council’s Lake and Foreshore/Coastal Protection Officer has since confirmed the proposal has adequately demonstrated compliance with all of the aforementioned conditions.

The application for stage 2 of the marina has adequately addressed the proposed works will not result in adverse impacts on the marine environment. Adequate mitigation measures for the construction and operation of the marina will be put in place. Ongoing monitoring is also proposed to be undertaken to ensure there are no significant adverse impacts created by the proposal.

A detailed assessment against the Concept Approval conditions is provided in Appendix A.

* 1. **Sea level rise and inundation**

The issue of sea level rise and inundation has been raised in relation to the proposed marina and access gangways.

Available studies completed to date provide the following information and requirements for the marina:

* tidal modelling of Lake Macquarie predicted peak water levels for a 100-year ARI event (rainfall and ocean dominated) = 1.86m AHD at the site
* current adopted sea level rise benchmarks are 0.4 metres for 50 years and 0.9 metres for 100 years (adopted across the lake)
* freeboard allowances = 500mm

Taking the known data into consideration, this requires a design level of the marina:

* 50 years = 2.76m AHD (1.86 rain event + 0.4 SLR + 0.5 freeboard)
* 100 years = 3.26m AHD (1.86 rain event + 0.9 SLR + 0.5 freeboard)

The existing marina has been designed with a pile cap level of 2.36mAHD, which accounts for the 1% AEP flood level for 2050 (i.e. 1.86m AHD + 0.5m freeboard = 2.36m AHD). The existing marina has purposely been designed to have an asset life of approximately 25 years.

Similar to stage 1 of the marina, stage 2 will be designed with an approximate 25-year asset life (to the year 2050) and achieve consistent AHD levels (i.e. 2.36m AHD pile cap level) as stage 1. Council are satisfied with the proposed 25-year asset life and associated pile cap levels.

It is recognised the marina and access gangways are adaptable to cater for sea level rise and can include a range of adaptive management measures (i.e. pile treatment and extension of access to land-based components). There is sufficient space within the Council public reserve where the access gangway is located for extension in the future to ensure continuous connectivity in the future.

* 1. **Heritage approval**

Rathmines Park is an item listed on the State Heritage Register. Pursuant to s4.46 of the *EP&A Act*, approval from Heritage NSW as an integrated authority is required.

Heritage NSW provides a list of standard exemptions, of relevance standard exemption 12 permits temporary structures however the temporary structure must not be erected for more than 30 consecutive calendar days. The proposed temporary construction compound will be present on site for three to four months and therefore does not qualify as an exemption.

Pursuant to s4.46 of the *EP&A Act* 1979, approval from Heritage NSW as an integrated authority is required. Subsequently a s60 approval has been provided by Heritage NSW.

1. **CONCLUSION**

This development application has been considered in accordance with the requirements of the *EP&A Act* and the *EP&A Reg 2021* as outlined in this report. Following a thorough assessment of the Concept Approval, SEARs, relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered the application can be supported.

Three of the key issues, being compliance with the relevant Concept Approval conditions, sea level rise and inundation, and European heritage, have been assessed as satisfactory.

The development has demonstrated compliance, with the understanding the site is subject to future sea level rise and the development can be adapted to suit future climate change impacts to the site.

Approval has been granted by Heritage NSW for the temporary use of Rathmines Park.

Overall the development forms stage 2 of a Concept Approval and will be an extension to the existing stage 1 marina at Trinity Point. The existing marina has undergone ongoing water quality monitoring for the duration of stage 1 construction and ongoing operations (testing and results are provided to the EPA and the public on a monthly basis). As a precondition within the Concept Approval, stage 2 of the marina cannot be approved unless it can be demonstrated there are no adverse impacts from the design or operation of a marina and there is suitable demand. These preconditions have been assessed within the Concept Approval assessment and considered satisfactory. Alongside demonstration that the proposal will not result in adverse environmental or amenity impacts, it has been suitably demonstrated the proposal will generate positive social and economic impacts to the locality and the Lake Macquarie region.

1. **RECOMMENDATION**

Development Application DA/226/2021 for Stage 2 Marina under Concept Approval MP 06\_0309 be approved pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Appendix D.