

DETERMINATION AND STATEMENT OF REASONS

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

DATE OF DETERMINATION	20 September 2022
DATE OF PANEL DECISION	19 September 2022
DATE OF PANEL MEETING	8 September 2022
PANEL MEMBERS	Alison McCabe (Chair), Juliet Grant, Douglas Lord and Jason Pauling
APOLOGIES	Allison Burrows
DECLARATIONS OF INTEREST	<p>Sandra Hutton declared a conflict of interest as she was involved in the preparation of the applications for the concept approval and Stage 1.</p> <p>Roberta Ryan declared a conflict of interest as she is consulting for Lake Macquarie City Council on strategic planning for Morisset.</p>

Public meeting held by videoconference on 8 September 2022, opened at 10:30am and closed at 12pm.

MATTER DETERMINED

PPSHCC-120 – Lake Macquarie – DA/226/2022 at 81 Trinity Point Drive, Morisset Park – Stage 2 Marina (as described in Schedule 1).

PANEL CONSIDERATION AND DECISION

The Panel considered the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel had the benefit of a number of briefings, from Council and the Applicant, a site inspection and a public briefing, prior to determining the matter. The Panel was provided with a further memo from Council addressing matters raised in the public meeting and the Panel's deliberation relating to:

- Consistency with the Concept Plan.
- Car parking.
- Public use and access of the foreshore.
- Ongoing monitoring and reporting requirements.
- SEPP (Resilience and Hazards).

A revised set of conditions was also requested addressing the above and any changes required for internal consistency and correction of errors.

The Panel has considered the information in this memo.

The proposal is for Stage 2 of a marina at Trinity Point – consistent with the Concept Approval MP06_309.

The proposal is designated development and is required to satisfy a number of Concept Approval conditions before Stage 2 of the marina can be determined. The Panel is satisfied that the proposed development is not inconsistent with the concept proposal approved for the site and that the pre-requisite conditions have been met.

The Panel heard from a number of submitters regarding potential environmental impacts –particularly impacts on water quality and the impact of a large marina on the surrounding community. The Panel is satisfied that the management and monitoring regime in place including the requirements of the Environmental Protection Licence will protect against unreasonable environmental impacts. It is

acknowledged that the potential for impacts arising from the marina and its function needs to be distinguished from behaviours of the broader recreational users of the lake.

Public access to the foreshore will be maintained and recreational users of the lake will not be unreasonably impacted.

The Panel considers that the conditions of the Concept Approval, Environmental Protection Licence and proposed conditions will minimise the potential for unforeseen impacts. These conditions also include ongoing monitoring of foreshore erosion and a revised Construction and Environmental Management Plan.

Conditions have been amended to require a specific amount of car parking consistent with Council controls i.e., 60 spaces.

It is acknowledged that the character of the local area has changed as a result of the Concept Approval. The proposed marina is consistent with this approval.

The Panel considers that on balance, the proposed development is appropriate for the site and that potential impacts can be reasonably mitigated and managed. The Panel notes that this has been demonstrated in the operation of Stage 1 of the marina and the monitoring program in place.

Accordingly, the Panel supports approval of the application subject to conditions.

Development application

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979* subject to the conditions in Schedule 2.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to approve the application for the following reasons:

- The proposed development is consistent with the Concept Approval issued.
- The environmental impacts of the proposed development can be adequately managed and mitigated.

CONDITIONS

The Development Application was approved subject to the conditions in Schedule 2. The conditions were amended from those contained in the Council Assessment Report as follows:





- Amended condition 1 to include EIS.
- Amended condition 29 signage to reflect car parking allocation.
- Amended condition 31 to reflect requirement for 60 car spaces.
- Additional condition 41 to reference the EPL requirements for monitoring.
- Additional condition 42 for signage.
- Additional condition 43 requiring ongoing monitoring of shoreline impacts.
- Minor typographic and drafting changes, including deletion of unnecessary conditions already covered by EPL and amendments to ensure consistency with EPL and subsequent renumbering of conditions.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during the public exhibition. The Panel notes that issues of concern included:

- Pollution impacts – sewerage, boat maintenance, complaints hotline.
- Community consultation prior to lodgement of DA.
- Extension of break wall without protocols for water testing.
- Insufficient facilities or infrastructure to cater for the extension.

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report and that no new issues requiring assessment were raised during the public meeting. The Panel notes that in addressing these issues that conditions exist for ongoing monitoring and additional conditions were included to require monitoring of shorelines changes.

PANEL MEMBERS	
 Alison McCabe (Chair)	 Juliet Grant
 Douglas Lord	 Jason Pauling

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-120 – Lake Macquarie – DA/226/2022
2	PROPOSED DEVELOPMENT	Stage 2 Marina under Concept Approval MP 06_0309
3	STREET 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
4	APPLICANT OWNER	Johnson Property Group Pty Limited The State of NSW, Trinity Point Holdings Pty Ltd and Lake Macquarie City Council
5	TYPE OF REGIONAL DEVELOPMENT	Designated development - marina or other related land and water shoreline facilities
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Planning Systems) 2021 Lake Macquarie Local Environmental Plan 2014 Draft environmental planning instruments: Development control plans: <ul style="list-style-type: none"> Lake Macquarie Development Control Plan 2014 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i> Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council Assessment Report: 1 September 2022 Addendum Council Assessment memorandum: 12 September 2022 Written submissions during public exhibition: 62 Verbal submissions at the public briefing on 4 August 2022: <ul style="list-style-type: none"> Tom Dumbrell on behalf Morisset Park and District Action Group On behalf of the applicant – Kate Cramp and James Thompson Verbal submissions at the public meeting on 8 September 2022: <ul style="list-style-type: none"> Irene Bates, Tom Dumbrell on behalf Morisset Park and District Action Group, Ben Shanley, Allen Hattaway and Brian Woolnough On behalf of the applicant – Kate Cramp, James Thompson, Paul Anink and Rick Plain Total number of unique submissions received by way of objection: 44
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: 31 March 2022 <ul style="list-style-type: none"> <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant, Douglas Lord and Jason Pauling <u>Applicant representatives</u>: Bryan Garland, Kate Cramp, Mat Ratnidge and Ben Patterson <u>Council assessment staff</u>: Nicole Sellen and Amy Regado <u>Department staff</u>: Carolyn Hunt and Lisa Foley Site inspection: 12 May 2022

		<ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant and Douglas Lord ○ <u>Council assessment staff</u>: Nicole Sellen, Rosie Turner and Glen Mathews ○ <u>Department staff</u>: Leanne Harris <ul style="list-style-type: none"> ● Briefing: 4 August 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant, Douglas Lord and Jason Pauling ○ <u>Council assessment staff</u>: Nicole Sellen and Amy Regado ○ <u>Department staff</u>: Leanne Harris, Carolyn Hunt, Maitree Bhowmick and Lisa Foley ● Final briefing to discuss council's recommendation: 8 September 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant, Douglas Lord and Jason Pauling ○ <u>Council assessment staff</u>: Nicole Sellen, Kane Hitchcock and Amy Regado ○ <u>Department staff</u>: Carolyn Hunt and Lisa Foley
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached at Schedule 2

SCHEDULE 2**Conditions of Consent**

(Approved subject to the conditions specified in this notice and in accordance with the stamped approved plans.)

Reason for the Imposition of Conditions

The reason for the imposition of the following conditions shall ensure, to Council's satisfaction, the objects of the *Environmental Planning and Assessment Act 1979* (as amended) are achieved:

To encourage:

- a) The proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forest, minerals, water, cities, towns, and villages for the purpose of promoting the social and economic welfare of the community and a better environment;
 - i. The promotion and co-ordination of the orderly and economic use of development of land;
 - ii. The protection, provision, and co-ordination of communication and utility services;
 - iii. The provision of land for public purposes;
 - iv. The provision and co-ordination of community services and facilities;
 - v. The protection of the environment, including the protection and conservation of native animals and plants including threatened species, populations, and ecological communities and their habitats;
 - vi. Ecologically Sustainable Development; and
 - vii. The provision and maintenance of affordable housing.
- b) To promote the sharing of the responsibility for environmental planning between the different levels of government in the State.
- c) To provide increased opportunity for public involvement and participation in environmental planning and assessment.

Administrative Conditions**1. Prescribed Conditions**

- a) The work shall be carried out in accordance with the requirements of the *Building Code of Australia*.
- b) In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
- c) A sign shall be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- i. showing the name, address and telephone number of the Certifying Authority for the work, and
- ii. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- iii. stating that unauthorised entry to the work site is prohibited.

Any such sign shall be maintained while the building work, subdivision work or demolition work is being carried out, but shall be removed when the work has been completed.

- d) Residential building work within the meaning of the *Home Building Act 1989* shall not be carried out unless the Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - i. in the case of work for which a principal contractor is required to be appointed:
 - a. the name and licence number of the principal contractor, and
 - b. the name of the insurer by which the work is insured under Part 6 of that Act,
 - ii. in the case of work to be done by an owner-builder:
 - a. the name of the owner-builder, and
 - b. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so the information notified under (d) becomes out of date, further work must not be carried out unless the Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

2. Approved Documentation

The development consent incorporates this schedule of conditions and the plans and documents referenced and stamped as follows:

a) Plans Reference:

Plans prepared by: Royal Haskoning Australia Pty Ltd; Project Number. PA2928			
Name of Plan	Drawing Number	Issue	Date
Concept Marina Layout Fully Developed Staging	P2928-MA-CP-0001	A	16/11/2021
Concept Marina Layout Stage 2 Works	P2928-MA-CP-0004	A	16/11/2021

Plans prepared by: ADW Johnson;			
Name of Plan	Drawing Number	Issue	Date
Floating Marina Office Floor Plan	37429(2) P-PSK-003-B	B	20/01/2022

Floating Marina Office Elevations	37429(2) P-PSK-003-B	B	20/01/2022
Floating Marina Office Roof Plan	37429(2) P-PSK-003-B	B	20/01/2022
Proposed Site Plan	37429(2) P-PSK-001-D	D	21/12/2021
Temporary Marina Building Retrofit	37429(2) P-PSK-002-A	A	21/12/2021
Temporary Construction Compound Site Plan	37429(2) P-PSK-002-A	A	21/12/2021
Temporary Construction Compound Site Layout	37429(2) P-PSK-002-A	A	21/12/2021

b) Document Reference:

Document	Reference	Author	Date
Environmental Impact Statement	37429(3)	ADW Johnson	07 February 2022
Traffic Impact Assessment	18362	The Transport Planning Partnership	02 February 2022
Noise & Vibration Impact Assessment & Construction Noise Management Plan	151156-6194B	Spectrum Acoustics	February 2022
Air Quality Assessment	610.30636-R01	SLR Consulting	03 February 2022
Disability Access Report	LP_21432	Lindsay Perry Access	23 January 2022
Waste Management Plan	-	Trinity Point	December 2021
Navigation Impact Assessment	PA2928WMRP220125	Royal HaskoningDHV	25 January 2022
Geotechnical Report	EP2397.003	EP Risk	25 January 2022
Impact Assessment for Soil Water Flooding & Coastal Erosion	PA2928-RHD-ZZ-XX-RP-Z-0003	Royal HaskoningDHV	28 January 2022
Marina Ecology Assessment Report	MPR3121	Marine Pollution Research Pty Ltd	January 2022
Statement of Heritage Impact	HN000435-A	Heritage Now	19 July 2022

Details of the development shown in the approved plans and documents referenced are altered in the manner indicated by:

- i. Any amendments made by Council on the approved plans or documents;
- ii. Any notes, markings, or stamps on approved plans or documents, and

- iii Any conditions contained in this consent.

General Conditions

The person having the benefit of the consent shall comply with each of the following conditions.

3. Marina Staging

Staging of the marina is to be carried out in accordance with the approved staging plan (Drawing No. PA2928-MA-CP-0001, REV A).

General Terms of Approval and Concurrence Requirements

4. Heritage NSW – Concurrence Requirements for Temporary Construction Compound

Works in accordance with the Statement of Heritage Impact

1. The applicant will implement Recommendation 2 (specific mitigation measures) and Recommendation 3 (heritage induction) from the Statement of Heritage Impact Temporary Construction Compound at Rathmines Park (Associated with Trinity Point Marina Stage 2) prepared by Heritage Now Pty Ltd on 19 July 2022 as a key element of their project delivery and heritage impact mitigation measures.

Fees, Charges and Contributions

5. Fixed Development Contributions

From the date this determination is made until payment, the amount of the contribution payable shall be indexed and adjusted at the close of business on:

- a) 14 August,
- b) 14 November,
- c) 14 February, and
- d) 14 May;

In each year in accordance with indexation provisions within the Section 7.12 Contributions Plan. The first date for indexation shall occur on the first abovementioned date after the Notice of Determination becomes effective.

The contribution payable shall be the amount last indexed and adjusted in accordance with the above. However, if no amount has been indexed and adjusted because the first date for indexation and adjustment has not arrived, the contributions payable shall be that contribution nominated below.

The contribution shall be paid to Council as follows:

- a) Development Applications involving subdivision – prior to the release of the Subdivision Certificate;
- b) Development Applications involving building work – prior to the release of the first Construction Certificate;

- c) Development Applications involving both subdivision and building work – prior to the release of the Subdivision Certificate or first Construction Certificate, whichever occurs first;
- d) Development Applications where no Construction Certificate or Subdivision Certificate is required – prior to the commencement of any construction work or prior to any occupation, whichever occurs first;
- e) Complying Development Certificates – prior to any work authorised by the application or certificate commencing.

It is the professional responsibility of the Certifying Authority to ensure the monetary contributions have been paid to Council in accordance with the above provisions.

Please note for payments made by cheque or electronic transfer – the release of any documentation shall be subject to the clearing of those funds.

Indexation details are available from Council's Development Contributions Team. A copy of the Section 7.12 Contributions Plan can be viewed on Council's website, and at Council's Administrative Building during Council's normal business hours.

In accordance with the provisions of the *Environmental Planning and Assessment Act 1979* – Section 7.12 and as at the date of this consent (and subject to indexation), the monetary contribution payable is:

TOTAL \$79,508.00

Conditions to be satisfied prior to the issue of the Construction Certificate

The person having the benefit of the consent shall comply with each of the following conditions prior to the issue of a Construction Certificate.

Any documentation required to be submitted for the Construction Certificate shall be submitted to the Certifying Authority unless otherwise specified.

6. Construction Certificate

Prior to the commencement of building work a Construction Certificate shall be obtained.

7. Geotechnical Report Compliance Review

The recommendations of the Geotechnical Report Review Reference EP2397.003 prepared by EP Risk P/L dated 25/01/2022 shall be complied with. Any works undertaken in relation to the development shall embody all relevant recommendations of the Geotechnical Report Review.

The engineering plans shall be certified as being designed in accordance with the approved Geotechnical Report Review.

8. Construction Environmental Management Plan

A revised Construction Environmental Management Plan shall be submitted to Council for approval for the Stage 2 Marina Works prior to the issue of a Construction Certificate. The revised plan shall include the following:

- A Construction Noise and Vibration Management Plan based on recommendations of the Noise and Vibration Impact Assessment and Construction Noise Management Plan prepared by Spectrum Acoustics dated February 2022.

- Water Quality and Sediment Quality Monitoring Program based on recommendations of the Impact Assessment for Soil and Water, Flooding and Coastal Erosion prepared by Royal HaskoningDHV dated January 2022.
- Aquatic Ecology Management based on recommendations of the Marine Ecology Assessment Report prepared by Marine Pollution Research Pty Ltd dated January 2022.
- Traffic and Parking Management – Construction Traffic Management Plan to be prepared.
- Air Quality Management based on recommendations of the Air Quality Assessment prepared by SLR Consulting dated February 2022.
- Waste Management Plan
- Details of how the fuel system will be disconnected and re-orientated with no leakage into the lake.
- Geochemical Assessment to be reviewed in accordance with latest ANZECC guidelines with regards to changes in (if any).

9. Marina Piles

Marina piles shall be designed to achieve a maximum cap height of 2.36m AHD. This detail shall be shown on the construction drawings to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.

10. Rathmines Park

A dilapidation report shall be prepared for the area within Rathmines Park to be used as the temporary construction compound and submitted to Council for their records prior to the issue of a Construction Certificate.

Conditions to be satisfied prior to the commencement of works

The person having the benefit of the consent shall comply with each of the following conditions prior to the commencement of works.

11. Environmental Performance Monitoring and Reporting

The stage 1 Year 1 seasonal monitoring program in accordance with the details listed under C13 of the Concept Approval shall be continued for the pre-Stage 2 marina construction and submitted to Council prior to the commencement of works. Monitoring shall be carried out in accordance with the recommendations made in the Marine Ecology Assessment Report prepared by Marine Pollution Research Pty Ltd dated January 2022.

12. Hoarding and Construction Site Safety Fencing

Construction site safety fencing and/or hoarding shall be provided in accordance with WorkCover requirements. Such fencing and/or hoarding shall be erected wholly within the property boundary unless prior approval from Council is obtained.

Council approval is required to install hoarding, site fencing or overhead protective structures over or adjoining a public place i.e. a footpath or a Public Reserve. An application for temporary structure or occupation of road reserve should be submitted via Council's website.

No work shall commence until written approval is obtained.

Conditions to be satisfied during demolition and construction works

The person having the benefit of the consent shall comply with each of the following conditions during demolition and construction works.

13. Geotechnical Report Review Compliance

Where the geotechnical report review prepared for this development requires inspections, a suitably qualified engineer shall inspect the works at the stages specified in that report/review.

14. Waste Management

All requirements of the approved Waste Management Plan shall be implemented during the demolition, excavation and construction of the development.

15. Site Amenities

Toilet facilities shall be available or provided at the work site before works begin and shall be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

Each toilet shall:

- a) be a standard flushing toilet connected to a public sewer, or
- b) have an approved on-site effluent disposal system under the *Local Government Act 1993*, or
- c) be a temporary chemical closet.

16. Dust Suppression

During the extraction, removal, and transportation of material associated with the works, the person having the benefit of the consent shall ensure that airborne dust is contained within the work site or transport vehicles, and does not impact on the amenity of the surrounding environment.

Effective environmental controls and practices shall be implemented and maintained to the satisfaction of Council or the Certifying Authority.

17. Noise - Construction Sites

The operating noise level of construction site operations, including machinery, plant and equipment when measured at any affected premises, shall be evaluated and comply with the requirements of the NSW Office of Environment and Heritage publication *Interim Construction Noise Guideline July 2009*.

Approved Construction Times

- a) The approved hours for construction of this development are –

Monday to Friday - 7.00am to 6.00pm (piling works to be limited to be between 8.30am and 4.30pm).

Saturday – 8am to 1pm (piling works to be limited to be between 9am to 1pm).

- b) No construction work shall take place on Sundays or Public Holidays.

Construction Periods in Excess of 26 Weeks

- a) If the construction period is in excess of 26 weeks, a Noise Management Plan shall be provided to Council prior to the issue of the first construction certificate. Such plan shall be prepared with the assistance of a suitably qualified acoustic engineer, indicating whether the use of machinery, plant and equipment during those operations can be completed without causing offensive noise (as defined in the *Protection of the Environment Operations Act 1997*) in the neighbouring area. The Noise Management Plan shall be complied with at all times during the construction period and shall identify any mitigation measures to control noise, noise monitoring techniques and reporting methods, likely potential impacts from noise and a complaints handling system.
- b) Operational times may be amended with the written advice of Council's General Manager or delegate.

18. Construction Environmental Management Plan

The provisions of the Construction Environmental Management Plan are to be complied with during the duration of construction works.

19. Temporary Construction Compound

Use of Rathmines Park as a temporary construction compound is to be in accordance with the approved temporary construction compound site plan and site layout plan (dwg ref: 37429(3)-PSK-002-A, Version A).

Notice is to be provided to Council prior to works commencing. The notice is to detail when use of Rathmines Park is to commence and expected period of time.

Conditions to be satisfied prior to issue of an Occupation Certificate

The person having the benefit of the consent shall comply with each of the following conditions prior to the issue of the Occupation Certificate, Interim or Final, as stated in each condition.

20. Occupation Certificate

The development shall not be occupied or used prior to the issuing of a Final Occupation Certificate or Interim Occupation Certificate by the Certifying Authority. Where an Interim Occupation Certificate has been issued, only that part of the building to which the Certificate applies may be occupied or used.

21. Fix Damage Caused by Construction Works

Any damage to a public road or associated structures caused as a consequence of the construction works shall be made good to the satisfaction of Council.

Any disused kerb and gutter and footpath crossing shall be removed and replaced with full kerb and gutter in accordance with Council's standards.

These works shall be undertaken prior to the issue of the Final Occupation Certificate.

22. Geotechnical Report Review Compliance

Prior to the issuing of an Occupation Certificate the suitably qualified engineer who inspected the works shall provide written confirmation the constructed works are in accordance with the recommendations of the Geotechnical Report Review prepared for the development.

23. Environmental Protection Licence

A revised Environmental Protection Licence shall be obtained from the Environmental Protection Authority to include Stage 2 of the Marina prior to the Occupation Certificate being issued.

24. Tethered Buoys

Tethered buoys shall be placed along the outer edge of the seagrass bed both north-west and south-east to the extent of the marina lease area. These buoys shall be labelled to indicate 'no powered vessels west (or inshore)' of the buoys. The placement of the north-western buoys shall ensure that vessels utilising the shore side fuel wharf facility do not attempt to turn into or over the seagrass beds. The tethered buoys shall be placed prior to the issue of an Occupation Certificate.

25. Environmental Performance Monitoring and Reporting

The stage 1 Year 1 seasonal monitoring program in accordance with the details listed under C13 of the Concept Approval are to be continued for the post-Stage 2 marina construction and submitted to Council prior to the issue of an Occupation Certificate. Monitoring is to be carried out in accordance with the recommendations made in the Marine Ecology Assessment Report prepared by Marine Pollution Research Pty Ltd dated January 2022.

26. Signage

Two signs shall be installed, at the entrance to the marina car park and within the marina car park, to notify users the car park is for marina users only. The signs shall be legible and within sight of vehicles entering or manoeuvring through the western car park.

Additional signage shall be installed within the site to allocate a further seven car parking spaces for marina users only.

Signage shall be installed prior to the issue of an Occupational Certificate to the satisfaction of the Certifying Authority.

27. Rathmines Park

The area identified for the purpose of the temporary construction compound shall be returned to the original state following completion of construction and prior to the issue of an Occupation Certificate.

A final dilapidation report shall be submitted to Council for approval prior to the issue of an Occupation Certificate.

Operational Conditions

The person having the benefit of the consent shall comply with each of the following conditions during the operation of the development.

28. Use and Allocation of Car Parking

A total of 60 car parking spaces shall be allocated to the marina use.

29. Lighting

Any lighting shall be installed to comply with *Australian Standard AS/NZS4282-2019*.

30. External Material Reflection

External materials shall have low-reflective properties.

31. Storage of Maritime Vessels

Maritime vessels, boat trolleys, cradles or associated equipment shall not be stored within 6 metres of the Deed High Water Mark or on adjoining Crown Land or public reserve.

No mooring is permitted on the landward side of the Marina, except for at the fuel berth, in order to minimise disturbance to seagrass and reduce the blockage of movement of seagrass wrack through the gap.

32. Noise – Ongoing Operation of Machinery, Plant and Equipment

The Laeq (15 minute) operating noise level of machinery, plant, equipment, or any other operational noise source, when measured at the boundary of another premises, shall comply with either the amenity or intrusiveness criteria calculated in accordance with the NSW Environment Protection Authority *Noise Policy for Industry 2017*.

For assessing amenity criteria, the area shall be categorised in accordance with the guidelines outlined in Chapter 2 of that Policy.

33. Noise - Sleep Arousal

The L1 (one minute) operating noise level during night time hours of the premises shall comply with the NSW Environment Protection Authority (EPA) sleep disturbance criteria, calculated in accordance with the NSW EPA Noise Policy for Industry 2017.

34. Bunded Spillage Areas

Chemicals stored in bulk form, or work areas where spillages are likely to occur, shall be bunded in accordance with the NSW Environment Protection Authority manual *Bunding and Spill Management*.

35. Liquid Gaseous Wastes, Emissions and Odour Control

Emissions shall be responsibly managed at all times, so as not to cause a danger to public health or loss of amenity or damage to the environment.

Any liquid gaseous wastes, emissions or odours shall be controlled and disposed of in accordance with the *NSW Protection of the Environment Operations Act 1997* and *Regulations 1997*, as amended.

Where it is proposed to treat and discharge waters to the Hunter Water Corporations Sewer, formal approval from the Corporation shall be obtained.

36. Trinity Point Marina Operations Manual

All berthing lessees shall be issued with a copy of the Trinity Point Marina Operations Manual. This manual shall also be made available within the marina office for review to Council and any member of the public.

The marina shall be managed in accordance with the Operations Manual.

37. Environmental Protection Licence

The marina and ongoing operation shall comply with all requirements of the Environmental Protection Licence issued by the Environmental Protection Authority.

38. Complaints Signage

Signage providing details of the complaints line required by the Environmental Protection Licence shall be provided in publicly visible locations at the marina amenities building, marina office and gangway access points. These signs shall be secure, weatherproof and remain legible at all times.

39. Ongoing Foreshore Monitoring

Ongoing monitoring of foreshore erosion and sediment movements by a qualified consultant shall occur within the bounds of Lot 1 DP 1252681, the foreshore lease area. Monitoring shall occur 12 months from the end of construction works and continue every 12 months for a period of 3 years. At the end of this period a report which includes the annual testing and results shall be submitted to Council for review. Subject to the findings of the report a revised monitoring period may be considered by Council.

Right of Appeal

If you are dissatisfied with this decision (including a determination on a review under Section 8.2), Section 8.7 and 8.10 of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the Land and Environment Court within six months after:

- a) the date on which you receive this notice, or
- b) the date on which that application is taken to have been determined under Section 8.11.

Section 8.8 of the Environmental Planning and Assessment Act 1979, does not give a right of appeal to an objector who is dissatisfied with the determination of the Council to grant consent to a development application, unless the application is for designated development (including designated development that is integrated development). The objector may, within 28 days after the date on which the notice of the determination was given in accordance with the regulations, and in accordance with rules of the Court, appeal to the Court.

Right of Review

Section 8.2 of the Environmental Planning and Assessment Act 1979 provides that the applicant may request the Council to review the determination. The request must be made in writing (or on the review application form) within six months after the date as specified in this notice of determination, together with payment of the appropriate fee. **(See exclusions note below).**

Exclusions: A request to review the determination of a development application pursuant to Section 82A of the Environmental Planning and Assessment Act 1979 can only be undertaken where the consent authority is Council, other than:

- (a) A determination to issue or refuse to issue a complying development certificate, or
- (b) A determination in respect of designated development, or

- (c) A determination in respect of integrated development, or
- (d) A determination made by the Council under Division 4 in respect of an application by the Crown.

Planning Assessment Commission

The Planning Assessment Commission has not conducted a public hearing in respect of this application.