

Jones, Sue

From: Peter Dive <Peter.Dive@justice.nsw.gov.au>
Sent: Friday, 19 July 2019 9:19 AM
To: Fowler, Mark
Subject: RE: Development Application 2019.208

Thanks Mark

With your advice, Department of Justice does not have any objection to the Development Proposal.

Regards

Peter Dive
Property and Asset Services Officer
Infrastructure and Assets
Corporate Services
Department of Communities and Justice
Level 5, 160 Marsden Street, Parramatta NSW 2150
P | **E** peter.dive@justice.nsw.gov.au

From: Fowler, Mark [<mailto:MFowler@begavalley.nsw.gov.au>]
Sent: Friday, July 19, 2019 9:14 AM
To: Peter Dive
Subject: RE: Development Application 2019.208

Thanks Peter.

From my initial assessment, I do not believe there would be any disruption to the Court House.

The application has been widely notified including the Port Authority, NSW Police, Department of Defence, etc du to various State and Federal departments having premises/services that operate out of Twofold Bay.

Regards



Mark Fowler
Senior Town Planner

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We wish to acknowledge the Traditional Custodians of the lands and waters of the Shire - the people of the Yuin nation and show our respect to elders past and present.

Check out all the latest news and events at Council on www.begavalley.nsw.gov.au

29 July 2019

M Fowler
Senior Planner
Bega Valley Shire Council
PO Box 492
BEGA NSW 2550

Dear M Fowler,

Proposal: Integrated Development – 2019.208 – Erection 154 Berth Marina and Wave Attenuator

Property: Lot 2 & 4 DP 1138056 and the waters of Cattle Bay – Cattle Bay Road, Twofold Bay, Eden

Thank you for your referral of 5 July 2019 seeking comment on the proposal from DPI Fisheries, a division of NSW Department of Primary Industries. Thank you for your payment of the IDA assessment fee of \$320.00, a receipt has been sent to you separately.

DPI Fisheries is responsible for ensuring that fish stocks are conserved and that there is no net loss of key fish habitats upon which they depend. To achieve this, DPI Fisheries ensures that developments comply with the requirements of the *Fisheries Management Act 1994* (namely the aquatic habitat protection and threatened species conservation provisions in Parts 7 and 7A of the Act, respectively), and the associated *Policy and Guidelines for Fish Habitat Conservation and Management (2013)*. In addition, DPI Fisheries is responsible for ensuring the sustainable management of commercial, recreational and Aboriginal cultural fishing, aquaculture and marine protected areas within NSW.

In relation to aquaculture the Department aims to encourage, support and protect sustainable aquaculture and to conserve and enhance the community's resources. To work with aquaculture industries, the community and other agencies to ensure aquaculture develops in a sustainable manner.

The Environmental Impact Statement (EIS) and associated appendices for the proposal have been reviewed by the Department.

Construction Environmental Management Plan (CEMP)

The Department requests the following amendments and inclusions be made to the CEMP

4.2 Soil and Water Management

- That a requirement for Environmental safeguards and mitigation methods to be installed for the marina construction works are consistent with "Managing Urban Stormwater: Soils and Construction" (4th Edition Landcom, 2004, aka the Blue Book) be included.
- That stockpiles should be located 20 metres away from adjacent water land. Stockpiles should be appropriately controlled by sediment fencing or other materials as prescribed in "Managing Urban Stormwater: Soils and Construction" (4th

Edition Landcom, 2004, aka the Blue Book) to ensure sediments do not enter the waterway

4.4 Water Quality

- That monitoring of turbidity during constructional 'impact' and 'control' sites be conducted on a **daily** basis.
- Additional mitigation method should be included;
 - visual monitoring of the worksite during construction is to be conducted to ensure that no visible turbid plumes are entering the environment.
 - anchors, cables, barge spuds etc, are not to be located within areas of seagrass or rocky reef.
 - hydraulic lines on plant operating on or adjacent to the water are to be sleeved to contain leaks or bursts.

I can advise that the Department is prepared to issue a Part 7 permit to enable construction of the Cattle Bay Marina and has no objections to Council issuing consent for the proposal, subject to the following General Terms of Approval (GTAs). As per s.91A(3) of the *Environmental Planning and Assessment Act 1979*, any consent issued by Council must be consistent with these GTAs.

1. The proponent must apply for and obtain a Part 7 permit for **dredging and reclamation** (s.201) and to **harm marine vegetation** (s.205) under the FM Act from DPI Fisheries prior to the commencement of any piling works on site, or lowering of the rock pinnacle. Permit application forms are available from the DPI Fisheries website at: <http://www.dpi.nsw.gov.au/fisheries/habitat/help/permit>;
2. All works must conform to and be consistent with the Environmental Impact Assessment (EIS) by Eden Cattle Bay Marina Pty Ltd dated April 2019 and associated appendices;
3. Environmental safeguards (e.g. silt curtains, sediment fences, booms etc.) are to be installed for the marina construction works consistent with "Managing Urban Stormwater: Soils and Construction" (4th Edition Landcom, 2004, aka the Blue Book) to ensure that there is no escape of turbid plumes into the aquatic environment;
4. Proposed Water Quality Monitoring Programs for both construction and operational periods are to be developed and provided to DPI Fisheries for comment and endorsement prior to the commencement of any works;
5. An amended Construction Environmental Management Plan (CEMP) is to be developed and provided to DPI Fisheries for comment and endorsement prior to the commencement of any works;
6. Debris and rubbish located in the vicinity of the existing jetty is to be removed;
7. Spill kits suitable for the containment of fuel and oils spills must be kept on site during construction; and
8. DPI Fisheries (1800 043 536) is to be immediately notified of any fish kills in the vicinity of the works. In such cases, all works other than emergency response procedures are to cease until the issue is rectified and written approval to proceed is provided by DPI Fisheries.

General comments related to operational risks and impacts over the longer term

Aquaculture

There are two Priority Aquaculture Areas (mussel leases) located 500 metres from the proposed marina and an additional two leases further south. These mussel leases are located within a NSW Shellfish Harvest Zone. Harvest standards are prescribed under

the NSW Shellfish Program administered by the NSW Food Authority, and the NSW mussel industry has a statutory responsibility to meet these standards. These standards also reflect the Australian standards for shellfish harvest prescribed in the Australian Shellfish Quality Assurance Program. These internationally accepted water quality standards are designed to protect consumers of shellfish from human pathogenic bacteria and viruses. Bacteria and viruses can accumulate in shellfish where shellfish growing waters are polluted by sewage or stormwater effluent.

Harvest of shellfish can be terminated if water quality deteriorates beyond accepted water quality standards. The long term protection of sanitary water quality in the area is therefore essential for human health reasons and the ongoing viability of the leases.

Concerns in relation to aquaculture broadly include:

- The potential risk to human health associated with accidental or intentional unmonitored sewage discharge from vessels. Discharges can result in closure of mussel leases to shellfish harvest and if not identified promptly, could result in contaminated shellfish entering the market place resulting in potential life threatening human health issues. Closure of mussel leases impacts the livelihood of mussel farmers and the economic flow-on to mussel farmers' service providers.
- Given the sensitivity of adjacent waters, the most critical issue for consideration in the proposed development is the potential for spill or process failure, causing human pathogenic viruses and bacteria to enter adjacent waters and potentially impact the water quality of adjacent mussel growing areas.

Appropriate conditions must be imposed to eliminate the risk of human pathogenic viruses and bacteria associated with sewage or sewage disposal systems affecting the sanitary water quality of the adjacent mussel growing areas.

Of serious concern is the limited provision made for onshore toilets and showers for marina users. The Department questions the adequacy of 1 shower, 4 toilets, 2 urinals and no laundry facilities being able to service a fully occupied and operational 154 berth marina. The ready availability of onshore facilities would reduce the risk of clandestine discharges from vessels.

DPI Fisheries has liaised with the NSW Food Authority regarding this referral, which has assessed the development application and provides the following response:

"The previous comments (provided by email 9 October 2017) would apply only if the storage tank component of the proposal was being pursued. As advised in the same email, 'the best outcome would be connection to the reticulated sewerage system and remove the effluent from the site'.

We note that the current DA supports wastewater being discharged into the Council wastewater system and '*suggests transporting the wastewater from the development to the existing manhole DZ1*'.

It is recommended that any private pump station installed as part of the development must be included on Council's inspection program as a high risk system."

Operational Management Plan

The Department requests the following amendments and inclusions be made to the Operational Environmental Management Plan;

9. Hazard Management

- i) a) The Marina Manager shall conduct **daily** inspections to monitor the site for leaks and spills

- iv) b) Cattle Bay Marina shall monitor the site on a **daily basis** to prevent discharges to bilge water and grey water from sinks, showers or other sources

14. Liquid Waste Management

- i) Cattle Bay Marina staff shall undertake **daily** inspections of the harbour waterways for detection of wastes, debris, oil slicks, coloured dye and other such material ...

15. Waterway Pollution

- ix) Cattle Bay Marina shall conduct **daily** inspections of the water surface ...

16. Water Quality

- iii) That levels of faecal coliform be included in the post construction monitoring of the water quality testing program

Super Yacht Berthing

We note that the super-yacht berthing area is situated in relatively shallow water (adjacent to and within the 5m depth contour). The EIS provided states that no dredging of Cattle Bay or Twofold Bay is required or proposed associated with this DA. DPI Fisheries is concerned that this location will provide inadequate keel clearance for its intended purpose and believe that further evidence is needed to confirm that dredging will not be required in this location.

We also have concerns about the capacity of the “muck truck” in relation to the sewage disposal requirements for “super yachts”. The effectiveness of the “muck truck” as an effective sewage disposal method for “super yachts” or provision of alternative arrangements should be detailed.

Recreational Fishing

The existing jetty is a popular local recreational fishing location. Any restrictions on public access will result in a reduction in recreational fishing opportunities. DPI Fisheries supports the proposal “that the marina will be made available to the public during marina opening hours (summer, Daylight saving 7am – 6pm, winter, Non-daylight saving 7am to 5pm)”. We also support the commitment to retaining 24hour per day public access to the jetty.

Wave Attenuator

There are currently 2 separate wave attenuators proposed for construction within Twofold Bay. The proposal has not included any assessment of the interaction of the two structures and the ultimate impacts on wave action.

Redistribution of sediments can lead to smothering of marine habitats such as rocky reef and seagrass vegetation along with land based erosion. The initial study based on the construction of a single wave attenuator predicted the realignment of Cattle Bay Beach. Further predictive studies analysing the combined impacts of both attenuators should be undertaken. A long term monitoring program should also be established to ensure that any predictions made in the modelling are accurate.

If council decides to issue development consent for the marina, DPI Fisheries recommends that the following conditions of consent be included to address ongoing operational issues:

1. Adequate onshore toilet, shower and laundry facilities are to be provided for the use of marina patrons.
2. An amended Operational Environmental Management Plan (OEMP) is to be developed and provided to DPI Fisheries for comment and approval prior to the commencement of operation.

3. An introduced marine species (IMS) management plan for construction and operation be developed and referred to DPI Fisheries (Biosecurity Division) for comment and approval prior to commencement of any works.
4. All relocated moorings are to be located outside of areas of rocky reef and seagrass.
5. All relocation moorings are replaced with sea-grass friendly moorings.
6. The finalised proposal(s) for the relocation of swing moorings be referred to DPI Fisheries for endorsement prior to commencement of any works.
7. The current 24hr per day public access to the existing jetty is not restricted or compromised by the operation of the marina.
8. The marina facility is made accessible to non-paying recreational users during marina opening hours as outlined in section 3.8 of the EIS.
9. The proponent is to keep detailed records in relation to the use and effectiveness of the "muck truck", including dates, times, name and berth of vessels using the machine, number of uses and volume and type of waste removed (sewage, grey water, bilge water).
10. Copies of the test reports produced from the operational water quality testing program be provided to DPI Fisheries.

If you require any further information, please contact me on (02) 4428 3007.

Yours sincerely



Jillian Reynolds
Fisheries Manager
Coastal Systems - South

Jones, Sue

From: Jones, Sue
Sent: Friday, 2 August 2019 12:15 PM
To: Fowler, Mark
Subject: FW: 2019.208 Referral Department of Defence Eden Cattle Bay Marina Lot 2 DP 1138056 Lot 4 DP 1138056 Cattle Bay Road EDEN Parcel 35803 35805 154 berth Marina and Wave Attenuator [SEC=UNCLASSIFIED]

FYI



Sue Jones
Support Specialist
Community, Environment & Planning

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www.begavalley.nsw.gov.au

We wish to acknowledge the Traditional Custodians of the lands and waters of the Shire
- the people of the Yuin nation and show our respect to elders past and present.

From: McLean, Benjamin MR 3 <benjamin.mclean3@defence.gov.au>
Sent: Friday, 2 August 2019 12:05 PM
To: Jones, Sue <SJones@begavalley.nsw.gov.au>
Cc: Harrison, David MR 10 <david.harrison10@defence.gov.au>; Hogan, Timothy MR 2 <timothy.hogan2@defence.gov.au>; Williams, Matt MR 7 <matt.williams7@defence.gov.au>
Subject: RE: 2019.208 Referral Department of Defence Eden Cattle Bay Marina Lot 2 DP 1138056 Lot 4 DP 1138056 Cattle Bay Road EDEN Parcel 35803 35805 154 berth Marina and Wave Attenuator [SEC=UNCLASSIFIED]

UNCLASSIFIED

Good afternoon Sue,

Thank you for providing Defence the opportunity to assess the proposed Marina and Wave Attenuator at Lot 2 DP 1138056 Lot 4 DP 1138056 Cattle Bay Road EDEN. Defence have no objection to the proposal.

Regards

Ben McLean

Executive Officer External Land Planning & Regulation
Estate Planning Branch | Infrastructure Division | Estate & Infrastructure Group

Department of Defence | BP26-01-A010 | 26 Brindabella Business Park | Canberra ACT 2609
P: 02 6266 8322 | E: Benjamin.mclean3@defence.gov.au

Defending Australia and its National Interests
www.defence.gov.au



M B Fowler
Assessing Officer
Bega Valley Shire Council
PO Box 492
Bega NSW 2550

Dear Mr Fowler,

DA 2019.208 Marina, Cattle Bay Road, Eden – Port Authority of NSW Submission

Thank you for referring the above-referenced development application to Port Authority of New South Wales (Port Authority) for comment.

Port Authority manages and operates the Port of Eden and provides ongoing services including the Harbour Master and marine pilots, hydrographic surveys and monitoring services, and emergency/spill response. Port Authority also manages cruise operations in Eden, including at the recently extended Eden cruise wharf.

With reference to this DA, Port Authority provided input into the Secretary's Environmental Assessment Requirements (SEARs), mainly raising issues concerning:

- cumulative impacts, particularly in regards to the cruise operations at the Eden Breakwater Wharf Extension (SSI 7734) and the Eden Safe Harbour Project wave attenuator;
- marine traffic, navigation and safety;
- hazards, in particular the risks of marine pollution during construction and operation, and of the potential effects of prop wash from cruise ships and tugs on vessels moored at the proposed marina; and
- Port of Eden's First Port of Entry Requirements.

After reviewing the development application, Port Authority has the following comments.

Cumulative Impacts

Port Authority understands that the design of the proposed Eden Safe Harbour Project wave attenuator may change from what has been considered in the development application's EIS. Port Authority therefore recommends that the applicant consult further with Crown Lands and/or RMS, as the proponent of the Safe Harbour Project.

Marine Traffic, Navigation and Safety

Harbour Master approval under Section 67ZN of the *Ports and Maritime Administration Regulation 2012* is required prior to any disturbance of the seabed from construction works.

YAMBA

PO Box 143
Yamba NSW 2464
T: 61 2 6646 2002

NEWCASTLE

PO Box 663
Newcastle NSW 2300
T: 61 2 4985 8222

SYDNEY

PO Box 25
Millers Point NSW 2000
T: 61 2 9296 4999

PORT KEMBLA

PO Box 89
Port Kembla NSW 2505
T: 61 2 4275 0100

EDEN

PO Box 137
Eden NSW 2551
T: 61 2 66461596

In addition, if the development application is approved, further consultation with the Harbour Master will be required in relation to marina construction and operation including, but not necessarily limited to:

- the relocation of swing moorings;
- the appropriate marking out and lighting of moored construction vessels and the delineation of construction areas;
- installation of the required aids to navigation; and
- the development of appropriate information on safe navigation in the Port of Eden.

Hazards

Port Authority previously indicated that the assessment should consider the potential effects of the significant prop wash that can be generated by cruise ships and tugs on vessels moored at the marina. Port Authority did not see evidence in the assessment that this has been adequately assessed and considered.

First Port of Entry Requirements

The Port of Eden currently holds a Biosecurity First Point of Entry Determination, but only in relation to the Breakwater Wharf at Snug Cove, and soon to be extended to the new Breakwater Wharf Extension (Eden cruise wharf). The applicant may need to apply to the Department of Agriculture to extend this Determination to the proposed marina at Cattle Bay.

Please don't hesitate to contact me (rbennett@portauthoritynsw.com.au) or Paul Webster, Harbour Master/Pilot, Eden (pwebster@portauthoritynsw.com.au) with any questions or to discuss any of the matters raised above in more detail.

Yours sincerely,



Ryan Bennett

Senior Planning and Sustainability Manager

2 August 2019



The General Manager
Bega Valley Shire Council
PO Box 492
Bega NSW 2550
Council@begavalley.nsw.gov.au

Our ref: DOC19/597913-13

Your ref: 2019.208

5th August 2019

Dear Mr Fowler

Subject: Development Application 2019.208, Cattle Bay Marina, Lot 2 DP1138056 and Lot 4 DP1138056, Cattle Bay Road, Eden

I refer to your request for the Department of Planning, Industry and Environment (the Department) to review and provide comments on the environmental impact statement and associated information.

Recent NSW Government public service changes mean that we are no longer referred to as the Office of Environment and Heritage. We are now the Biodiversity and Conservation Division (BCD) within the Department of Planning, Industry and Environment.

In 2018, we provided comments on the SEARs for the proposed development. Our advice was that the proponent should consider issues relating to biodiversity, Aboriginal cultural heritage, flooding and potential effects of coastal hazards on the proposal and arising from the proposal.

The current 2019 EIS does not adequately assess the impacts of the proposal on Aboriginal cultural heritage or coastal processes. The EIS also does not meet the requirements of the *Biodiversity Conservation Act 2017* for biodiversity assessment.

Further comments regarding biodiversity, Aboriginal cultural heritage and Coastal process and hazards values are provided in Attachment 1.

If you wish to discuss the contents of this letter further, please contact Lyndal Walters (02) 6229 7157 or via email to rog.southeast@environment.nsw.gov.au.

Yours sincerely,



ALLISON TREWEEK
Senior Team Leader – Planning
South East, Biodiversity and Conservation

Attachment 1 – Detailed comments on Cattle Bay Marina, Cattle Bay Road, Eden**Biodiversity**

We acknowledge that the site comprises cleared land, covered by a concrete slab. However, the *Biodiversity Conservation Act 2017* (BC Act) requires that the proponent must demonstrate how the proposed development does not exceed the biodiversity offsets scheme threshold as set out in Section 7.4 of the BC Act.

Marine Mammal protection

The mitigation and management measures described in the Marine Ecology Report 2019 should be incorporated into the CEMP and OEMP. We support the development of a Marine Mammal Protected Plan (MMPP) and request that a draft MMPP be provided to BCD so that we can provide input.

Aboriginal cultural heritage

The 2019 EIS does not adequately assess impacts for Aboriginal cultural heritage values in accordance with current legislative requirements.

The Aboriginal Heritage Impact Assessment (AHIA) submitted with the 2019 EIS was prepared in 2007 as part of a previous Part 3A Major Project application. As such, the assessment does not reflect the 2010 legislative requirements of the *National Parks and Wildlife Act 1974* (NPW Act) under which the current development application should be considered.

Regardless of the above, the EIS does not appear to adequately reflect the recommendations provided in the 2007 AHIA report. Specifically, whilst the 2007 AHIA report states the potential for sub-surface deposits to be of low research value; all Aboriginal objects are protected under the NPW Act regardless of their significance.

The 2007 AHIA report also specifically recommends the formulation of an Aboriginal Heritage Management Plan (AHMP) in consultation with the Eden Local Aboriginal Land Council prior to any development impacts. Whilst we note the reference to an AHMP under section 17.1 in the EIS (page 130); section 17.3 states an AHMP would only be prepared if earthworks are necessary under the existing concrete slabs.

The preparation of an AHMP itself was proposed to manage and mitigate impacts in relation to the development proposal in 2007. It therefore recommends various actions which would cover off on the proposed collection of objects, monitoring of ground disturbing activities, collection of any newly uncovered objects and excavation of potential features. As this development application is now being assessed under Part 4 of the *Environment Planning and Assessment Act 1979*; a number of the mitigation strategies proposed in the 2007 report would need to be implemented under an Aboriginal Heritage Impact Permit (AHIP).

We note the 2005 Construction Environmental Management Plan submitted with the current development application is outdated and incorrectly refers to the *Heritage Act 1977* for managing Aboriginal cultural heritage values under section 4.10 (pages 14).

In order for Council to adequately consider whether the proposed development will impact Aboriginal heritage values - we recommend an updated assessment for Aboriginal cultural heritage

values be undertaken for the current development proposal in line with the 2010 assessment requirements. Not undertaking an appropriate assessment prior to approval means that any Aboriginal objects uncovered during development works will require immediate stop-work whilst the objects are assessed. This could result in significant time delays occurring during construction.

If it is assessed that Aboriginal objects are to be harmed as a result of the project an Aboriginal Heritage Impact Permit (AHIP) will be required under the NPW Act.

Coastal processes and hazards

The EIS referred does not adequately assess the impacts of the proposal on coastal hazards, or the impacts of coastal erosion and flooding on the land-based component. The wave modelling should include a greater range of events and incorporate the adjacent approved Eden Safe Harbour wave attenuator to identify impacts on coastal erosion and how they will be managed.

The EIS has considered clause 15 of the Coastal Management SEPP and have concluded that the marina will not cause increased risk from coastal hazards. The EIS indicated there would be minimal (considered insignificant) changes to wave direction and energy at Cocora Beach. However, extreme coastal events have not been included in the wave modelling and the report has not considered the impacts of coastal hazards on the land based component.

The wave modelling has only considered up to a 50 year ARI event as this was required to inform the wave attenuator design to meet certain criteria for wave climates for small craft harbours. However, to understand the impacts from larger coastal events, particularly for Cocora Beach, the model should be run for larger events, such as 100 year ARI. We note that the current wave modelling used up to significant offshore wave height of 8m, where as in the recent June 2016 storm significant wave height at the Eden buoy was greater than this at 8.46m. If modelling for the 100 year ARI indicates negative impacts at Cocora Beach and risks to any natural or built assets, the EIS should outline how these will be mitigated.

The Eden Safe Harbour wave attenuator will be located adjacent to the proposed Cattle Bay wave attenuator. Both wave attenuators should be incorporated into the modelling to determine any interaction on coastal processes and impacts on the surrounding area.

In terms of coastal erosion, the modelling suggests there will be erosion associated with the reported clockwise rotation of Cattle Bay Beach. As such, further investigations are required on the impact of the coastal erosion on beach amenity and assets at Cattle Bay. A longer term monitoring program should also be established to determine if impact predictions from the modelling to Cocora Beach are accurate. The EIS should outline how the proponent will mitigate any negative impacts to Cocora Beach if shown by the longer term monitoring.

Bega Valley Shire Council's Coastal Processes and Hazards Definition Study (2015) identifies hazard lines at Cattle Bay that indicate both immediate and longer-term risks but the EIS has not considered the effects of coastal hazards including beach erosion and coastal inundation on the land based component of the proposal. The EIS should outline why it has not been considered, for example if the proponent is using a short term temporary structure prior to approval being sort for a tourist facility.

Flooding

In determining the proposal, Bega Valley Shire Council should consider the flood information for the site which has been developed for council. Rhelm are currently preparing the "Towamba River, Lake Curalo and Two-fold Bay Flood Study at Towamba and Eden" on behalf of council. The



Towamba River, Lake Curalo and Two-fold Bay Flood Study at Towamba and Eden study area fully encompasses both land based and estuarine areas relevant to the current proposal and is understood to be the best available flood information for the site.

Water quality

The EIS has considered the CM SEPP and provisions for development in the coastal environmental area. The EIS has considered the environmental values of the area including assessment of background water quality and identification of seagrass habitat in and around the proposed marina area. Water quality monitoring and turbidity guidelines for 'stop work' have been identified in the CEMP and WQMP but the reports have not identified how the trigger value was determined and its suitability for the site. This should be included in the EIS with reference to other similar projects. We understand that Fisheries will assess and provide further information regarding the impacts and management of the proposal on water quality and the seagrass habitat.

General Terms of Approval - Issued



Notice No: 1586455

Bega Valley Shire Council

Bega NSW 2550

Attention: Mark Fowler

Notice Number 1586455
Date 04-Oct-2019

Re: Eden Cattle Bay Marina Pty Ltd - Proposal for Cattle Bay Marina

Issued pursuant to Section 4.46 Environmental Planning and Assessment Act 1979

I refer to the development application and accompanying information provided for the proposed Cattle Bay Marina received by the Environment Protection Authority (EPA) on 26 September 2019.

EPA has reviewed the information provided and has determined that it is able to issue a licence for the proposal, subject to a number of conditions. The applicant will need to make a separate application to EPA to obtain this licence.

The general terms of approval for this proposal are provided at attachment A. If Bega Valley Shire Council grants development consent for this proposal these conditions should be incorporated into the consent.

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

In assessing the proposal EPA has also identified a number of environmental issues that Bega Valley Shire Council may wish to consider in its overall assessment of the application. Specifically, it is recommended that council:

1. Require residents along streets fronting the proposed marina location to be appropriately notified of the time and duration of any piling works if they are to be impact piling
2. Restrict repairs and/or maintenance works on the existing wharf to standard construction hours

General Terms of Approval - Issued



Notice No: 1586455

3. Require an appropriate Marina Occupation Agreement between marina owner and the owner/operator of any vessel berthing at the marina, as described in 8.2 of the EIS

If you have any questions, or wish to discuss this matter further please contact Tristan Johnston on (02) 6229 7002.

Yours sincerely



.....
Matthew Rizzuto

Unit Head

South East - Queanbeyan

(by Delegation)

General Terms of Approval - Issued



Notice No: 1586455

Administrative conditions

Note: Mandatory conditions for all general terms of approval

A1. Information supplied to the EPA

A1.1 Except as expressly provided by these general terms of approval, works and activities must be carried out in accordance with the proposal contained in:

- the development application 2019.108 submitted to Bega Valley Shire Council on 5 July 2019;
- any environmental impact statement within Environmental Impact Assessment - Marina Development at Cattle Bay, Eden, April 2019 (DOC19/854638-1) relating to the development; and
- Appendices 1 - 27 supplied to the EPA in relation to the environmental impact statement, including but not limited to:
 - *Eden Marina Project Report* - March 2019 (DOC19/854638-1)
 - *Cattle Bay Marina Water Quality Management Plan* - December 2018 (DOC19/854638-1)
 - *Cattle Bay Marina Development Application Air Quality Report At Cattle Bay Road Eden for Eden Resort Hotel Pty Ltd (Issue C)* - 14 October 2015 (DOC19/854638-1)
 - *Cattle Bay Marina Development Application Acoustic Report At Cattle Bay Road Eden for Eden Resort Hotel Pty Ltd (Issue E)* - 13 October 2015 (DOC19/854638-1)

A2. Fit and Proper Person

A2.1 The applicant must, in the opinion of the EPA, be a fit and proper person to hold a licence under the Protection of the Environment Operations Act 1997, having regard to the matters in s.83 of that Act.

Limit conditions

L1. Pollution of waters

L1.1 Except as may be expressly provided by a licence under the Protection of the Environment Operations Act 1997 in relation of the development, section 120 of the Protection of the Environment Operations Act 1997 must be complied with in and in connection with the carrying out of the development.

Note: For the purpose of L1 pollution of waters include but is not limited to wash water and detergent generated from boat cleaning activities, detergent, paint, fuel, oil, grease, debris, litter and sediment.

L2. Waste

Note: Mandatory conditions to be placed on all general terms of approval

L2.1 The licensee must not cause, permit or allow any waste generated outside the premises to be received at the premises for storage, treatment, processing, reprocessing or disposal or any waste generated at the premises to be

General Terms of Approval - Issued



Notice No: 1586455

disposed of at the premises, except as expressly permitted by a licence under the Protection of the Environment Operations Act 1997.

L2.2 This condition only applies to the storage, treatment, processing, reprocessing or disposal of waste at the premises if it requires an environment protection licence under the Protection of the Environment Operations Act 1997.

L2.3 The applicant must assess, clarify and manage any waste generated at the premises in accordance with the Waste Guidelines prior to dispatching the waste off site.

L2.4 For the purpose of condition L2, waste generated at the premises includes waste collected from vessels at the premises and may include but not limited to contaminated bilge water, litter, garbage, fuel, oil and waste from abrasive cleaning, sanding, scraping and painting.

L3. Noise limits

Hours of operation

L3.1 Normal construction work at the premises must only be conducted between 7:00am and 6:00pm Monday to Friday, and 8:00am to 1:00pm Saturday. No work is to be conducted on Sundays and Public Holidays. Piling activities must only be conducted between 8:00am, and 12:00pm and 5:00pm Monday to Friday.

L3.2 This condition does not apply to the delivery of material outside the hours of operation permitted by condition L6.1, if that delivery is required by police or other authorities for safety reasons; and/or the operation or personnel or equipment are endangered. In such circumstances, prior notification is provided to the EPA and affected residents as soon as possible, or within a reasonable period in the case of emergency.

L3.3 The hours of operation specified in conditions L6.1 may be varied with written consent if the EPA is satisfied that the amenity of the residents in the locality will not be adversely affected.

Operating conditions

O1. Activities must be carried out in a competent manner

O1.1 Activities must be carried out in a competent manner

This includes:

- a. The processing, handling, movement and storage of material and substances used to carry out the activity;
- b. The treatment, storage, processing, reproducing, transport and disposal of waste generated by the activity;
- c. The clearing of boats and disposal of waste water generated from the cleaning of boats

O2. Odour

O2.1 No condition of this approval identifies a potentially offensive odour for the purposes of the Protection of the Environment Operations Act 1997

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03. Dust

03.1 Activities occurring at the premises must be carried out in a manner that will minimise emissions of dust from the premises.

03.2 Trucks entering and leaving the premises that are carrying loads must be covered at all times, except during loading and unloading.

Note: Guidance information on the source of odours, dust and particulates is available in the Environmental Guidelines - Best Management Practice for Marinas and Boat Repair Facilities, 1999.

04. Waste management

04.1 All activities at the premises must be carried out in a manner that will prevent waste from polluting waters.

04.2 The applicant must provide facilities to ensure the collection, storage and disposal of waste generated at the premises so that it does not pollute waters

04.3 For the purposes of condition 04:

- a. Waste generated at the premises includes waste collected from vessels at the premises and may include but not be limited to contaminated bilge water, litter, garbage, fuel, oil and waste from abrasive cleaning, sanding, scraping, painting and any waste water generated from boat washing activities.
- b. Facilities may include but not be limited to tarpulins, waste bins, pump-out facilities, signage and agreements with those operating on the site

Note: All waste that contains organotin biocides must be collected, stored and disposed of in accordance with the Organotin Waste Chemical Order 1989. Guidance information relating to the Organotin Chemical Control Order and other solid and liquid waste is provided in the Environmental Guidelines - Best Management Practices for Marina and Boat Repair Facilities, 1999

04.4 The applicant must ensure that contaminated stormwater at the premises is managed in a manner that will prevent pollution of waters

Note: Information on sources of stormwater containment and management of contaminated stormwater is provided in Environmental Guidelines - Best Management Practices for Marina and Boat Repair Facilities, 1999.

04.5 The applicant must ensure that sewage and greywater, that is associated with vessels at the premises, is managed in a manner that will prevent pollution of waters.

Note: Information on collection of sewage and greywater from vessels is provided in the Environmental Guidelines - Best Management Practices for Marina and Boat Repair Facilities, 1999.

Note: Materials and substances includes but not limited to vessels, watercraft, tanks and engines.

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Monitoring and recording conditions

M1 Monitoring records

M1.1 The results of any monitoring required to be conducted by the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, in relation to the development or in order to comply with the load calculation protocol must be recorded and retained as set out in conditions M1.2 and M1.3.

M1.2 All records required to be kept by the licence must be:

- a. in a legible form, or in a form that can readily be reduced to a legible form;
- b. kept for at least 4 years after the monitoring or event to which they relate took place; and
- c. produced in a legible form to any authorised officer of the EPA who asks to see them.

M1.3 The following records must be kept in respect of any samples required to be collected:

- a. the date(s) on which the sample was taken;
- b. the time(s) at which the sample was collected;
- c. the point at which the sample was taken; and
- d. the name of the person who collected the sample.

Reporting conditions

R1 Annual return documents

R1.1 The applicant must provide an annual return to the EPA in relation to the development as required by any licence under the Protection of the Environment Operations Act 1997 in relation to the development. In the return the applicant must report on the annual monitoring undertaken (where the activity results in pollutant discharges), provide a summary of complaints relating to the development, report on compliance with licence conditions and provide a calculation of licence fees (administrative fees and, where relevant, load based fees) that are payable. If load based fees apply to the activity the applicant will be required to submit load-based fee calculation worksheets with the return.

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Attachment – Mandatory Conditions for all EPA licences

Administrative conditions

Operating conditions

Activities must be carried out in a competent manner

Licensed activities must be carried out in a competent manner.

This includes:

- a. the processing, handling, movement and storage of materials and substances used to carry out the activity; and
- b. the treatment, storage, processing, reprocessing, transport and disposal of waste generated by the activity.

Maintenance of plant and equipment

All plant and equipment installed at the premises or used in connection with the licensed activity:

- a. must be maintained in a proper and efficient condition; and
- b. must be operated in a proper and efficient manner.

Monitoring and recording conditions

Recording of pollution complaints

The licensee must keep a legible record of all complaints made to the licensee or any employee or agent of the licensee in relation to pollution arising from any activity to which this licence applies.

The record must include details of the following:

- the date and time of the complaint;
- the method by which the complaint was made;
- any personal details of the complainant which were provided by the complainant or, if no such details were provided, a note to that effect;
- the nature of the complaint;
- the action taken by the licensee in relation to the complaint, including any follow-up contact with the complainant; and
- if no action was taken by the licensee, the reasons why no action was taken.

The record of a complaint must be kept for at least 4 years after the complaint was made.

The record must be produced to any authorised officer of the EPA who asks to see them.

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Telephone complaints line

The licensee must operate during its operating hours a telephone complaints line for the purpose of receiving any complaints from members of the public in relation to activities conducted at the premises or by the vehicle or mobile plant, unless otherwise specified in the licence.

The licensee must notify the public of the complaints line telephone number and the fact that it is a complaints line so that the impacted community knows how to make a complaint.

This condition does not apply until 3 months after this condition takes effect.

Reporting conditions

Annual Return documents

What documents must an Annual Return contain?

The licensee must complete and supply to the EPA an Annual Return in the approved form comprising:

- a. Statement of Compliance; and
- b. Monitoring and Complaints Summary.

A copy of the form in which the Annual Return must be supplied to the EPA accompanies this licence. Before the end of each reporting period, the EPA will provide to the licensee a copy of the form that must be completed and returned to the EPA.

Period covered by Annual Return

An Annual Return must be prepared in respect of each reporting, except as provided below

Note: *The term "reporting period" is defined in the dictionary at the end of this licence. Do not complete the Annual Return until after the end of the reporting period.*

Where this licence is transferred from the licensee to a new licensee,

- a. the transferring licensee must prepare an annual return for the period commencing on the first day of the reporting period and ending on the date the application for the transfer of the licence to the new licensee is granted; and
- b. the new licensee must prepare an annual return for the period commencing on the date the application for the transfer of the licence is granted and ending on the last day of the reporting period.

Note: *An application to transfer a licence must be made in the approved form for this purpose.*

Where this licence is surrendered by the licensee or revoked by the EPA or Minister, the licensee must prepare an annual return in respect of the period commencing on the first day of the reporting period and ending on

- a. in relation to the surrender of a licence - the date when notice in writing of approval of the surrender is given; or
- b. in relation to the revocation of the licence – the date from which notice revoking the licence operates.

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Deadline for Annual Return

The Annual Return for the reporting period must be supplied to the EPA by registered post not later than 60 days after the end of each reporting period or in the case of a transferring licence not later than 60 days after the date the transfer was granted (the 'due date').

Notification where actual load can not be calculated

(Licences with assessable pollutants)

Where the licensee is unable to complete a part of the Annual Return by the due date because the licensee was unable to calculate the actual load of a pollutant due to circumstances beyond the licensee's control, the licensee must notify the EPA in writing as soon as practicable, and in any event not later than the due date.

The notification must specify:

- a. the assessable pollutants for which the actual load could not be calculated; and
- b. the relevant circumstances that were beyond the control of the licensee.

Licensee must retain copy of Annual Return

The licensee must retain a copy of the annual return supplied to the EPA for a period of at least 4 years after the annual return was due to be supplied to the EPA.

Certifying of Statement of Compliance and Signing of Monitoring and Complaints Summary

Within the Annual Return, the Statement of Compliance must be certified and the Monitoring and Complaints Summary must be signed by:

- a. the licence holder; or
- b. by a person approved in writing by the EPA to sign on behalf of the licence holder.

A person who has been given written approval to certify a Statement of Compliance under a licence issued under the Pollution Control Act 1970 is taken to be approved for the purpose of this condition until the date of first review this licence.

Notification of environmental harm

Note: The licensee or its employees must notify the EPA of incidents causing or threatening material harm to the environment immediately after the person becomes aware of the incident in accordance with the requirements of Part 5.7 of the Act

Notifications must be made by telephoning the EPA's Pollution Line service on 131 555.

The licensee must provide written details of the notification to the EPA within 7 days of the date on which the incident occurred.

Written report

Where an authorised officer of the EPA suspects on reasonable grounds that:

- a. where this licence applies to premises, an event has occurred at the premises; or

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- b. where this licence applies to vehicles or mobile plant, an event has occurred in connection with the carrying out of the activities authorised by this licence,

and the event has caused, is causing or is likely to cause material harm to the environment (whether the harm occurs on or off premises to which the licence applies), the authorised officer may request a written report of the event.

The licensee must make all reasonable inquiries in relation to the event and supply the report to the EPA within such time as may be specified in the request.

The request may require a report which includes any or all of the following information:

- a. the cause, time and duration of the event;
- b. the type, volume and concentration of every pollutant discharged as a result of the event;
- c. the name, address and business hours telephone number of employees or agents of the licensee, or a specified class of them, who witnessed the event; and
- d. the name, address and business hours telephone number of every other person (of whom the licensee is aware) who witnessed the event, unless the licensee has been unable to obtain that information after making reasonable effort;
- e. action taken by the licensee in relation to the event, including any follow-up contact with any complainants;
- f. details of any measure taken or proposed to be taken to prevent or mitigate against a recurrence of such an event;

any other relevant matters.

The EPA may make a written request for further details in relation to any of the above matters if it is not satisfied with the report provided by the licensee. The licensee must provide such further details to the EPA within the time specified in the request.

General conditions

Copy of licence kept at the premises or on the vehicle or mobile plant

A copy of this licence must be kept at the premises or on the vehicle or mobile plant to which the licence applies.

The licence must be produced to any authorised officer of the EPA who asks to see it.

The licence must be available for inspection by any employee or agent of the licensee working at the premises or operating the vehicle or mobile plant.

6 August 2019

Planning and Development
Bega Valley Shire Council
PO Box 492
BEGA NSW 2550
Submitted via BVSC Development Tracker

Dear BVSC Planning and Development Team,

Subject: DA2019/208 – 154 berth marina comprising three floating pontoon arms restrained by piles, a fixed wave attenuator – Lot 2 and 4, DP 1138056 – Cattle Bay Road EDEN

In response to your correspondence dated 5 July 2019, I advise that the NSW Maritime Division of Transport for NSW (Maritime) have **no objections** to this proposal, assessed on the grounds of impact to navigation, subject to the following conditions being adopted:

- A network of Aids to Navigation be installed in compliance with System A of the International Association of Lighthouse Authorities (IALA), subject to the additional approval of Maritime.

Reason: To provide for safe navigation of vessels. The documents provided by Council related to the proposed development do not include any details on any network of Aids to Navigation.

- Any licence or lease that will provide for the occupation of NSW waters by the proposed development will not take effect until the use of the waters is immediately required for the construction of the facility and related occupation of NSW waters.
- Maritime is provided with a minimum of 12 months notice on the intentions of the proponent to undertake activities that will require the displacement of Maritime mooring licenses.

Reason: To allow Maritime to maintain use of the waters affected by the proposed development through administering mooring licenses to the public. Documents related to the development detail a staged approach to the construction of the facility (refer: Appendix 8), however, there is no detail on construction timelines, commencement of work notification periods or acknowledgement of the relocation of 24 affected Maritime administered mooring licenses.

I advise the proponent should also be aware of activities associated the with Eden Safe Harbour project being managed by the NSW Department of Planning, Industry and Environment (Crown Land), as I note there is an absence of detail on this project in the documents supporting the development.

It is important to note that the proponent, or any entity or contractor acting on their behalf, are not exempt from the provisions of the *Marine Safety Act 1998*, or any other relevant legislation, and all parties must comply with any direction given by Roads and Maritime Services' officers with regard to safe navigation or the prevention of pollution.

Should you have any queries in relation to this matter please contact Manager Operations South, Deon Voyer, on 0419 751 852, and forward a copy of the Determination of Consent for our information to NavigationAdviceSouth@rms.nsw.gov.au

Yours sincerely,



Mark Hutchings
A/Executive Director Maritime
Transport for NSW



Our Reference: DOC19/171128

The General Manager
Bega Valley Shire Council
Box 492
BEGA NSW 2550

Attention: M Fowler – Assessing Officer

Development Application 2019.208 – Cattle Bay Road, Eden for new Marina

I refer to your letter of 5 July 2019 in relation to DA2019.208 seeking comment regarding the proposed development of a marina at Cattle Bay, Eden.

It is noted the application is for the same marina development previously approved by the Joint Regional Planning Panel on 1 December 2015.

Crown Lands has assessed the potential impacts of this development on Crown land and offers the following comments for Council's consideration when determining the application.

- On 20 December 2018 Crown Lands provided Landowner's Consent to the application. The matters outlined in that letter are still of relevance and we would request Council should consider these matters in its assessment of the application.
- Section 2.4 of the Environmental Impact Statement states that the Department "has agreed to deal directly with the applicant on leasing the land for the proposed marina." The applicant holds a licence over the existing wharf. Approval has been given to directly negotiate the terms of a lease with Eden Resort Hotels, with the grant of a lease being subject to the determination of a Development Application for the marina development.
- Irrespective of any development consent, or any approval given by other public authorities, work or occupation of Crown land cannot commence without a current tenure from the NSW Department of Planning, Industry & Environment - Crown Lands, authorising such work or occupation.

Thank you for considering these comments in assessing the Development Application.

Yours sincerely



Scott Mullen
Senior Project Manager
Crown Lands – Commercial Services
Date: 5/8/2019