

ADDENDUM COUNCIL ASSESSMENT REPORT

Panel Reference	PPSTH-2
DA Number	2019.208
LGA	Bega Valley Shire Council
Proposed Development	Construction of a 154 berth marina comprising three floating pontoon arms restrained by piles, a fixed wave attenuator, minor refurbishment of the existing wharf, landside car park comprising 97 spaces plus 3 loading/unloading spaces, temporary building to house administration and toilets and relocation of 24 swing moorings.
Street Address	Cattle Bay Road Eden 2551
Applicant/Owner	Eden Cattle Bay Marina Pty Ltd
Date of DA lodgement	13/06/2019
Number of Submissions	Six (6) submissions received
Recommendation	Approval subject to conditions
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	The proposal has been referred to the Southern Regional Planning Panel as the consent authority under Clause 4.5(b) of the Environmental Planning and Assessment Act 1979 as the development is for the purposes of: “(b) marinas or other related land and water shoreline facilities, which meet the requirements for designated development under clause 23 of Schedule 3 to the Environmental Planning and Assessment Regulation 2000”
List of all relevant s4.15(1)(a) matters	<p>List of relevant Acts of Legislation</p> <ul style="list-style-type: none"> • Environment Protection and Biodiversity Conservation Act 1999 • Protection of the Environment Operations Act 1997 • Fisheries Management Act 1994 • Biodiversity Conservation Act 2016 • National Parks and Wildlife Act 1974 <p>List of all of the relevant environmental planning instruments under S4.15 (1)(a)(1) –</p> <p>State Environmental Planning Policies</p> <ul style="list-style-type: none"> • State Environmental Planning Policy (Coastal Management) 2018 • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy (Primary Production and Rural Development) 2019 • State Environmental Planning Policy No 33 – Hazardous and Offensive Development • State Environmental Planning Policy No. 44 – Koala Habitat Protection • State Environmental Planning Policy No. 55 – Remediation of Land • State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 <p>Local Environmental Plan</p> <ul style="list-style-type: none"> • Bega Valley Local Environmental Plan (BVLEP) 2013 <p>Other policies</p> <ul style="list-style-type: none"> • Bega Valley Section 94 and 94A Contribution Plan 2014 <p>List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority under S4.15(1)(a)(ii)</p> <ul style="list-style-type: none"> • State Environmental Planning Policy No. 44 – Koala Habitat Protection <p>List any development control plan under S4.15(1)(a)(iii)</p> <ul style="list-style-type: none"> • Bega Valley Development Control Plan (BVDCP) 2013 <p>List any relevant regulations under S4.15(1)(a)(iv) eg Regs – Nil</p>
List all documents submitted with this report for the	<ul style="list-style-type: none"> • Attachment 1 - Amended Construction Environmental Management Plan • Attachment 2 - Amended Operation Environmental Management Plan

Panel's consideration	<ul style="list-style-type: none"> Attachment 3 – NSW Biodiversity and Conservation comments Attachment 4 – Department of Planning Concept Approval (MP05_0032) Attachment 5 – Draft conditions of consent
Clause 4.6 requests	Nil
Summary of key submissions	N/A
Report prepared by	Mark Fowler – Senior Town Planner Keith Tull – Planning and Sustainability Manager
Report date	11 March 2020

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

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

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

Clause 4.6 Exceptions to development standards

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

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Not Applicable**

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

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**

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

Executive summary

This Addendum Council Assessment Report provides consideration and comment on additional information submitted by the applicant since the lodgement of Council's Assessment Report to the Southern Joint Regional Planning Panel on 4th December 2019. The additional information submitted includes a revised Construction Environmental Management Plan (CEMP) and Operation Environmental Management Plan (OEMP) to satisfy several draft conditions that were attached to the Council's Assessment Report.

This Addendum Report also provides additional detail and comment on the existing Major Concept Approval (05_0032) for a mixed tourist and residential development issued by the Department of Planning in 2008. This report outlines the components of the Major Concept Approval, whether and/or how the proposed marina may constrain development on this site and assesses the current proposal against any requirements of that approval.

Council recommends that the Southern Joint Regional Planning Panel, as determining authority, consider the additional information submitted by the applicant since the lodgement of the Council's Assessment report. Council maintain its recommendation that the application be approved subject to the amended draft conditions of consent attached to this addendum assessment report.

Construction and Operational Environmental Management Plans

The applicant has lodged a revised CEMP and OEMP as a result of reviewing the draft conditions of consent that were attached to Council's Assessment Report dated 4 December 2019. With the provision of the revised CEMP and OEMP, the applicant has requested amendments or deletion be made to draft conditions 6, 23, 24, 25, 31, 32, 37, 38, 43, 44, 45, 47 and 48, before being presented to the Joint Regional Planning Panel meeting for determination.

The applicant submits that (based on the submission of the revised CEMP and OEMP), conditions requiring amendments or subsequent approvals from the consent authority or approval agencies are not required.

The amendments to both documents also address comments that were previously raised by the NSW Department of Primary Industries (Fisheries) and NSW Department of Planning, Industry and Environment (Biodiversity and Conservation) (DPIE) as detailed in the initial Council Assessment Report.

The applicant has lodged a number of revised versions of the CEMP and OEMP since the 20th January 2020 to address both the draft conditions of consent and Fisheries and DPIE comments. The latest revised CEMP and OEMP submitted to Council are included as Attachments 1 and 2.

Council staff have reviewed the revised CEMP and OEMP and identified that they have addressed the relevant draft conditions and support for their amendment or deletion. The relevant draft conditions reviewed are as follows and include Council staff comment and recommendation;

Condition 6 – The revised OEMP has included the requirements of the Biosecurity Act 2015. It is reasonable that the condition be amended to remove the requirement of a revised OEMP. Compliance with the Biosecurity Act is maintained in the draft condition given the previous comments received by the Port Authority of NSW.

Condition 23 – The revised OEMP and CEMP include references to the report prepared by Ocean Environmental Consulting entitled “Cattle Bay Marina Marine Ecology Report 2019”, the response to agency submission by Ocean Environmental Consulting dated 20 September 2019 inclusive of the water quality management, NSW DPI Permit to harm Marine Vegetation, Marine Mammal Protection Plan and Introduced Marine Species Management Plan and mitigation measures to be initiated during construction and operation of the marina and water quality monitoring protocols.

The revised CEMP and OEMP will need to be amended to include the NSW DPI Permit to Harm Marine Vegetation, the Marine Mammal Protection Plan and Introduced Marine Species Management Plan. Given that these are important aspects on the mitigation measures for both construction and operations of the proposed marina, it is recommended that Condition 23 be amended to require that the CEMP and OEMP still be provided to Council and identified State Agencies in the consent for endorsement prior to the issue of any construction certificate by the Principal Certifying Authority.

Condition 24 – The revised OEMP and CEMP have included references to solid, liquid and hazardous wastes and adequately address the need to manage these potential impacts. Council staff support the deletion of this condition.

Condition 25 – The CEMP and OEMP have referenced the need for a flood emergency management plan to be prepared. As the plan has not been prepared, it is recommended that the condition be reworded to require the flood emergency management plan to be prepared and submitted to Council for endorsement and that the final plan be attached to the revised CEMP and OEMP.

Condition 31 – The applicant has made the necessary changes in the revised CEMP detailed by this condition. Council staff support the deletion of this condition.

Condition 32 – The applicant has made the necessary changes in the revised OEMP detailed by this condition. Council staff support the deletion of this condition.

Condition 37 – The applicant has made the necessary changes in the revised CEMP detailed by this condition. Council staff support the deletion of this condition.

Condition 38 – The applicant has made the necessary changes in the revised CEMP detailed by this condition. Council staff support the deletion of this condition.

Condition 43 – The applicant has made the necessary changes in the revised CEMP detailed by this condition. The revision is also consistent with the NSW EPA General Terms of Approval. Council staff support the deletion of this condition.

Condition 44 – The applicant has made the necessary changes in the revised CEMP detailed by this condition. Council staff support the deletion of this condition.

Condition 45 – The applicant has made the necessary changes in the revised CEMP detailed by this condition. Council staff support the deletion of this condition.

Condition 47 – Both the revised CEMP and OEMP have addressed the mitigation measures and recommendations made in the Water Quality Management Plan prepared by Ocean Environmental Consulting December 2018. Council staff support the deletion of this condition.

Condition 48 – The applicant has made the necessary changes in the revised OEMP detailed by this condition. Council staff support the deletion of this condition.

Finally, in reviewing the draft conditions, Council has made an amendment to Condition 1 to include reference to the revised CEMP and OEMP in the approved documentation for the proposed marina.

The revised CEMP and OEMP with the draft conditions of consent were forwarded to Fisheries and DPIE for further comment. Fisheries advised that they *“acknowledge that the proponent has incorporated all changes requested by the Department and has no further comment to make on these documents”*.

DPIE had reviewed and provided further comments on the revised CEMP and OEMP and the draft conditions of consent (see Attachment 3 - DPIE comments). That review highlighted a number of outstanding matters in relation to the revised CEMP and OEMP.

The applicant responded to the DPIE comments with the relevant matters detailed below, followed by Council staff comments.

Aboriginal cultural heritage

The applicant detailed the DPIE comments relates to supporting the draft conditions of consent and that these matters are already addressed in the CEMP aligning with the draft conditions of consent.

Staff Comment: Condition 33 in the draft consent attached to the Council’s Assessment Report is proposed to be maintained and is consistent with the comments made by DPIE.

Biodiversity – CEMP Section 4.3 marina Fauna

The applicant has further updated the revised CEMP and OEMP (See Attachment 1 and 2) to align with the DPIE comments and recommended condition of consent for the Marine Mammal Protection Plan (MMPP).

Staff Comment: The revised CEMP and OEMP does include reference that *“a (MMPP) is to be prepared prior to construction of the marina in consultation with the Department of Planning Industry and Environment – Biodiversity and Conservation Division. The MMPP is to be attached to this CEMP and the OEMP for the marina.”*

Although addressing the need for an MMPP to be prepared, Council supports the concerns raised by DPIE and for the formulation of a MMPP. The Marine Ecology Report attached to the Environmental Impact Statement, recommends the need for a MMPP be included as a condition of consent. This aligns with the comments provided by DPIE.

Although the applicant has attempted to demonstrate through the revised CEMP and OEMP that an MMPP will be undertaken, it is recommended that a condition of consent be included requiring that a MMPP be prepared with input by DPIE prior to any construction works commencing and for the MMPP to be attached to both the CEMP and OEMP. This has been included as Condition 30 in the modified draft consent (See Attachment 4).

OEMP Section 20 Marine Ecology

The applicant has detailed that Section 20 of the OEMP has previously been amended to clarify referencing to certain sections of the Marine Ecology Report. The applicant further detailed that maintenance items in Section 20 of the OEMP will be reflected in Section 10 of the revised OEMP.

Staff comment: A review of the revised OEMP includes appropriate referencing of relevant documents utilised to identify all mitigation measures identified in the Cattle Bay Marina Marine Ecology Report prepared by Ocean Environmental Consulting (February 2019). Condition 23 of the modified draft consent will require that the final CEMP and OEMP incorporating all required management plans to be submitted to Council and identified State Agencies for endorsement prior to the issue of any construction certificate by the Principal Certifying Authority.

Coastal processes

The applicant detailed that the OEMP will be amended to include a joint monitoring program for changes to Cocora Beach as requested by DPIE.

Staff comment: A review of the revised OEMP by the applicant has included that the marina is to use their best endeavours to take action to prepare and implement a joint monitoring program with the NSW DPIE on potential changes to Cocora Beach resulting from the Cattle Bay marina and Eden Safe Harbour wave attenuators. Further comments were sought from DPIE on whether the applicant had addressed their concerns. At the time of writing, no further comments had been provided.

It is considered that the applicant has addressed the concerns raised by DPIE in regard to a joint monitoring program to be developed for changes to Cocora Beach as requested by DPIE.

Updating of DPIE details

The Draft Modified Consent has also been updated to reference NSW Department of Planning, Industry and Environment.

Major Concept Approval (05_0032) Department of Planning

The development of the land based component of the site and surrounding lands has been subject to a Major Project Concept Approval (05_0032) issued by the Minister for Planning on 22 August 2008. The approval has been subsequently modified on two separate occasions and is still active. The Concept Approval (05_0032) is for a mixed tourist and residential development (see Attachment 4). The concept approval provides for 8 precincts comprising areas for a hotel, conference, serviced apartments, dwellings and residential flat buildings and open space areas.

The Concept Approval (05_0032) also provides the future design parameters of the site and surrounding lands in regard to building heights, number of storeys, floor spaces ratios, building footprints, location of access and pedestrian linkages, staging and revegetation and rehabilitation works.

The approval has been enacted with the applicant undertaking works in accordance with condition C7(1) being the dedication of the foreshore area to Council as public reserve and the demolition of existing waterfront buildings required for Stage 1.

The proposed land based components of the marina would be sited within Precinct A2 under Concept Approval (05_0032). Precinct A2 comprise a 60 room hotel, 74 serviced apartments and 134 car spaces and is located adjacent to Precinct A1 which comprises a conference building/function room/restaurant and 31 car spaces.

The proposed access into the site for the Marina is consistent with the proposed access for the proposed Hotel and Serviced Apartments.

The design of the proposed land based component of the marina is located to minimise construction works on the site. Its positioning would be located within Precinct A2 identified in the Concept Approval (05_0032) plans, with the provision of on-site carparking and portable structures for offices and amenities to be situated on existing concrete slabs. The design enables the car parking areas and portable buildings to be removed and/or integrated into any future development application for the hotel, serviced apartments and/or conference/function room/restaurant.

The one aspect of potential conflict between the proposed marina development and the Concept Approval (05_0032) would be the integration of the required marina car spaces within Precincts A1 and A2.

Without detailed design plans for Precincts A1 and A2, Council staff consider that there is suitable land area to accommodate carparking for both the proposed marina and uses under Concept Approval (05_0032).

CONCLUSION

The modified CEMP and OEMP submitted by the applicant has addressed several draft conditions detailed in the Council's Assessment Report submitted in December 2019.

The modified CEMP and OEMP have also been referred to both the NSW Department of Agriculture (Fisheries) and Department of Planning, Industry and Environment (Biodiversity and Conservation).

Council staff have reviewed these matters and support the amendment or deletion to those draft conditions detailed in this report.

It is considered that the proposed amendments to the CEMP and OEMP re-enforces the mitigation measures for the proposed development on the environment.

A review of the Department of Planning's Major Project Concept Approval (05_0032) has identified that there should be no impediment to that approval as a result of this proposed development.

RECOMMENDATION

That the modified CEMP and OEMP be endorsed in the approved plans and that the modified draft consent be approved as detailed in Attachment 5 of this Addendum Council Assessment Report.