

TABLED DOCUMENT

ITEM NO. 3

DEVELOPMENT APPLICATION 16-2019-8-1 SOLDIERS POINT MARINA - ALTERATIONS AND ADDITIONS TO EXISTING MARINA, LANDSCAPING, SITE PREPARATION WORKS INCLUDING PARTIAL DEMOLITION OF EXISTING SLIPWAY AND EARTHWORKS AT SUNSET BOULEVARDE AVENUE, RIDGEWAY AVENUE AND MITCHELL STREET, SOLDIERS POINT (LOT 2071 DP852662, LOTS 321 & 322 DP636840, LOT 539 DP823769 AND LOTS 1 & 2 DP1058490) – PLANNERS ASSESSMENT REPORT.

ORDINARY COUNCIL MEETING 27 AUGUST 2019



PORT STEPHENS
C O U N C I L



APPLICATION AND PROPERTY DETAILS

Application Number	16-2019-8-1
Development Description	Soldiers Point Marina – Alterations and additions to existing Marina (construction of two storey addition comprising members Lounge, gymnasium, pool, spa, pool lounge, patio, decking, amenities, storage and plant rooms), landscaping, site preparation works including partial demolition of existing slipway and earthworks.
Applicant	CKDS ARCHITECTURE PTY LTD
Date of Lodgement	09/01/2019
Value of Works	\$1,900,526.00
Property Address	2A Ridgeway Avenue SOLDIERS POINT, 2C Ridgeway Avenue SOLDIERS POINT, 2E Ridgeway Avenue SOLDIERS POINT, 2F Ridgeway Avenue SOLDIERS POINT 9 Mitchell Street SOLDIERS POINT, 2A Sunset Boulevard SOLDIERS POINT
Lot and DP	LOT: 539 DP: 823769, LOT: 321 DP: 636840, LOT: 322 DP: 636840, LOT: 2071 DP: 852662, LOT: 321 DP: 636840, LOT: 1 DP: 1058490, LOT: 2 DP: 1058490
Current Use	Soldiers Point Marina
Zoning	B1 NEIGHBOURHOOD CENTRE / PART W2 RECREATIONAL WATERWAYS
Site Constraints	LEP 2013 – Wetlands; SEPP (Coastal Management) 2018; Port Stephens – Great Lakes Marine Park (Special Purpose Zone); Acid Sulfate Soils – Class 1 and 4; and Flood prone land – high hazard flood fringe.

Development Proposal

The application proposes alterations and additions to the existing commercial premises and club facility, known as Soldiers Point Marina (**Figure 1** and **2**). The proposed works are to be located in the area lying directly to the north, which is currently used as a slipway. Key features of the proposed development include:

- Site preparation work including partial demolition of the existing slipway, minor earthworks and the driving of pier foundations;
- Construction of a two-storey addition to the marina, to measure 994.0m² in size. The key features of the development include;
 - Members Lounge;
 - Gymnasium;
 - Swimming pool and spa with a shaded pool lounge and patio;
 - Three storage rooms;
 - Bathroom facilities;
 - Infrastructure and plant room;
 - Decking with associated stairwells; and
 - Enhancement landscaping.

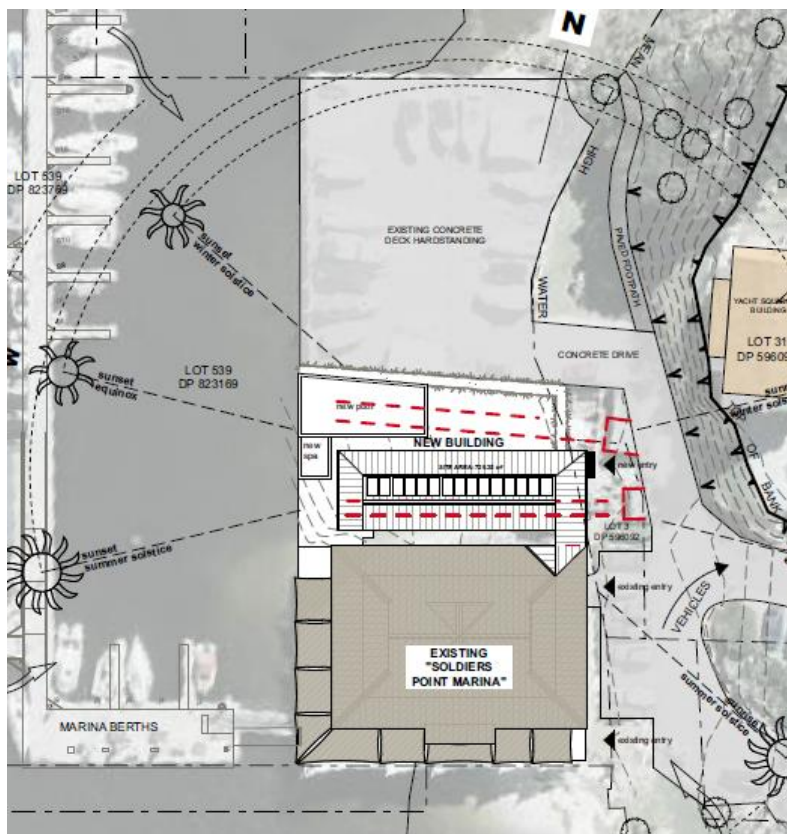


Figure 1: Location of proposed development in proximity to existing building

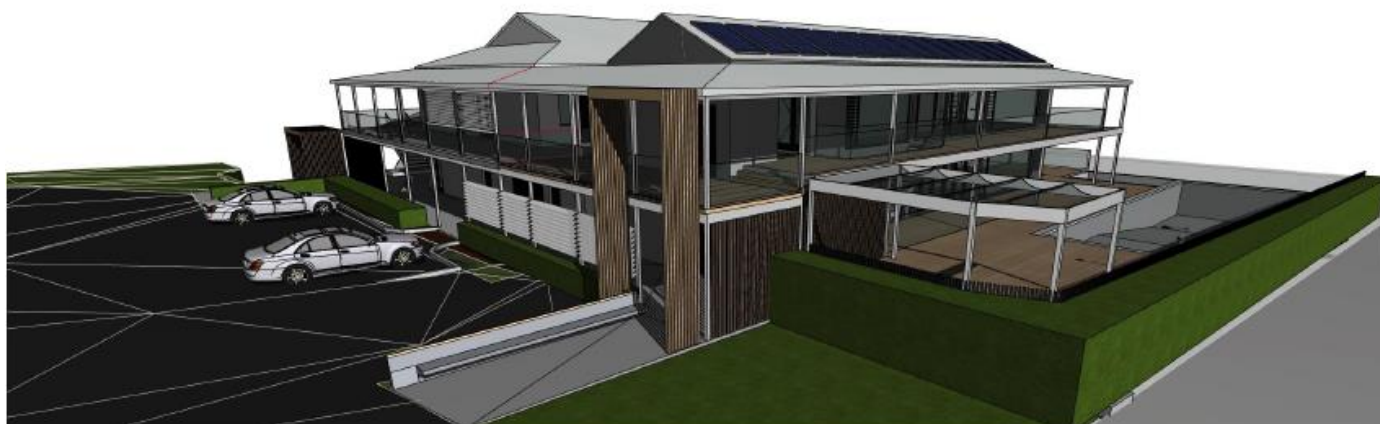


Figure 2: Perspectives of proposed development

Site description

Soldiers Point Marina is located at the north-western end of the peninsular between Everitt Park and Sunset Beach (**Figure 3**). Dowadee Island is located directly opposite the Marina. An oyster lease is located to the north of the Marina in proximity to Dowadee Island. The Marina is positioned within the Port Stephens estuary within the Karuah River and Great Lakes Catchment area. The site is approximately 7.5 kilometres north-west of the Nelson Bay Town Centre. The Marina currently comprises 90 berths, a dual slip way, concrete hardstand area and a marina building, and the following associated uses: administration offices, restaurant, café, two boat sales offices, workshop, laundry, sauna/massage rooms and amenities. Existing berths are also being utilised for wedding functions and a floating café.

The existing marina site encompasses 16,360m² of land and waterways and is irregular in shape. The correct land titles and deposited plans owned or leased by the proponent are provided below:

- 2A Sunset Boulevard Avenue, Soldiers Point (Lot 2071 in DP 852662).
- 2A Ridgeway Avenue, Soldiers Point (Lot 321 in DP 636840).
- 2C Ridgeway Avenue, Soldiers Point (Lot 539 in DP 823769).
- 2E Ridgeway Avenue, Soldiers Point (Lot 1 in DP 1058490).
- 2F Ridgeway Avenue, Soldiers Point (Lot 2 in DP 1058490).
- 2 Sunset Boulevard, Soldiers Point (Lot 197 in DP 27084).
- 9 Mitchell Street, Soldiers Point (Lot 322 in DP 636840).

The Marina site is zoned W2 Recreational Waterways and part B1 Neighbourhood Centre. The extension is located wholly on land zoned B1.



Figure 3: GIS aerial image of subject site

Site History

The existing 90 berth Marina was approved under development application 7-1981-625-1. Prior to this time the marina comprised of a small number of swing moorings. The initial application sought approval for 130 berths, however the approval was granted for stages 1 and 2 of the development, being 90 berths until such time that adequate car parking could be provided to facilitate the total development of 130 berths. A number of applications comprising alterations/additions and redesign of marina berths, as well as modification of the marina building have been approved subsequent to the granting of the original approval, although the total number of approved berths remained at 90. The marina operates 24 hours a day, seven days a week in order to enable marina berth holders access to their vessels. An access control gate is located within the existing building associated with the Marina.

The Marina's associated car park comprises 21 parking spaces and is located at No.2 Sunset Boulevard. A boom gate currently exists to restrict access to the site and spaces are designated to specific marina clients through name plates. The site is regular in shape and 760m² in area and is zoned R2 Low Density Residential. Car parking is prohibited in the R2 zone, however the subject site maintains existing use rights. The original marina approval (7-1981-625-1) required the provision of 45 car parking spaces and application 7-1982-1663-1 facilitated construction of 20 of the required spaces at No.2 Sunset Boulevard. The site had previously been rezoned to a 'Special Business Zone' (under IDO 23) to facilitate the development.

Subsequently, application E827/1994 was approved resulting in the reconfiguration of parking at No.2 Sunset Boulevard to facilitate 24 spaces. The remaining 21 required car parks were partially provided within land located at 2A Ridgeway Avenue, 9 Mitchell Street and the road reserve of Sunset Boulevard and Ridgeway Avenue. However, a historic shortfall of 17 car parking spaces exist due to the construction of the 90 berth marina.

An application was lodged in 2012 under 16-2012-57-1 which sought approval for the expansion of the marina to accommodate an additional 58 berths along with associated car parking. This application was refused by the JRPP on 12 June 2014 due to outstanding issues relating to Aboriginal Cultural Heritage, ecological impacts, car parking, visual amenity and site suitability. An application was lodged in 2015 under 16-2015-586-1 which sought approval for the expansion of the marina of the same kind under 16-2012-57-1, and sought to address the reasons for refusal issued by the JRPP. This application was also refused by the JRPP on 25 February 2016.

Site Inspection

A site inspection was carried out on Thursday 18 April 2019. The subject site can be seen in the images below:



Image 1: Existing car park no. 1 with boom gate (owned by Marina)



Image 2: Existing car park no. 2 with boom gate (owned by Marina)



Image 3: Access to the Marina and existing car parks to the left



Image 4: Viewing west over subject site to the marina and moorings with the existing club and commercial building to the left. The existing slipway (the development site) is in the centre foreground.



Image 5: Photograph of the existing slipway. Facing west from ground level showing the current site conditions.



Image 6: Photograph looking south towards the existing club and commercial building with the existing slipway in the foreground.



Image 7: Photograph of the existing slipway (the development site). Photograph taken facing east from the marina and moorings. Port Stephens Yacht Club is visible on the left and the existing club and commercial building is visible on the right.



Image 8: Signage displayed in the neighbourhood, raising concern over patron carparking.



Image 9: Existing carparking within the local area. The marina is pictured in the distance.

ASSESSMENT SUMMARY

Designated Development	The application is not designated development.
Integrated Development	The application does require additional approvals listed under s.4.46 of the EP&A Act.
Concurrence	The application does require the concurrence of another body.

Internal Referrals

The proposed development was referred to the following internal specialist staff. The comments of the listed staff have been used to carry out the assessment against the S4.15 Matters for Consideration below.

Engineering Services

The application was referred to Council's Development Engineer for assessment. Additional information was originally requested relating to the existing water quality devices on-site and amended music modelling. On 15 March 2019, a revised stormwater plan and water quality modelling was submitted to Council.

The assessment of the amended information identified that the proposal was acceptable in regards to stormwater management. As such, the proposed development is considered to be consistent with the LEP 2013 and DCP 2014. The engineering referral recommended approval, subject to conditions relating to; the provision of detailed stormwater engineering plans, construction traffic management, flood mitigation and other standard conditions. These conditions have been included in the recommended conditions of consent to be reported to Council.

Building Surveyor

The application was referred to Council's Building Surveyor for assessment. No objections were made and the application is recommended for approval, subject to conditions relating to; compliance with the Building Code of Australia, Disability (Access) Standards, general construction requirements and swimming pool requirements. These conditions have been included in the recommended conditions of consent to be reported to Council.

Development Contributions

The application was referred to Council's Development Contributions Officer and was assessed under the Port Stephens Fixed Development Contributions Plan. In accordance with 25J3(g) of the *Environment Planning and Assessment Regulation 2000*, as the proposed development is an enlargement/expansion/intensification of the current use of land, fixed levies apply and have been included in the recommended conditions of consent to be reported to Council.

Natural Resources

The application was referred to Council's Environmental Planner for assessment and additional information was requested in relation to the following issues:

- Insufficient assessment of impacts to seagrass and threatened shorebirds;
- Finished floor level of the swimming pool and spa being below the mean high water mark; and
- Insufficient details of construction methodology

Additional information was submitted by the applicant to address the above concerns, however, the information was deemed insufficient in relation to management of impacts to seagrasses and migratory shorebirds.

Further information was requested from the applicant, including details of construction methodology and mitigation measures to minimise impacts to seagrass as well as an improved seagrass assessment. Upon submission of the additional information the application was supported, subject to recommended conditions of consent relating to the preparation of a construction environmental management plan (CEMP). These conditions have been included in the recommended conditions of consent to be reported to Council.

Environmental Health

The application was referred to Council's Environmental Health Officer for assessment. No objections were made and the application is recommended for approval, subject to conditions relating to; public swimming pool requirements, noise and food area fit-out, preparation and storage. These conditions have been included in the recommended conditions of consent to be reported to Council.

Property Services

The application was referred to property services as the proposal occupies three parcels of Council owned land. Owners consent was provided by Council and no objections were raised. The application was supported with recommended conditions relating to the entering into a licence agreement for the occupation of Council owned land.

External Referrals

The proposed development was referred to the following external agencies for comment.

Department of Primary Industries (DPI) – Fisheries

The DA was referred to DPI – Fisheries under Section 205 and Section 219 *Fisheries Management Act 1994* (FM Act), for a permit to harm marine vegetation in a protected area and/or a permit to create an obstruction. In response it was noted that the proposal to use driven piles does not require a permit under the FM Act as the works do not include any dredging, reclamation, harm to marine vegetation or blockage of fish passage. No objection was raised to the proposed development in this regard.

Department of Primary Industries (DPI) – Water

Consultation with DPI – Water was undertaken to determine whether the DA was required to be referred under Section 91 of the *Water Management Act 2000* (WM Act). In response, it was noted that the subject site is located within the area mapped as exempt waterfront land in the Port Stephens area and meets the requirements of clause 36 of Schedule 4 of the WM (General) Regulation 2018. In this regard, a controlled activity approval and/or referral to DPI – Water is not required.

Department of Primary Industries (DPI) – Crown Lands and Water

The DA was referred to DPI – Crown Lands and Water as part of the subject site, being Lot 539 DP 823769, is located wholly on Crown land owned by the State of NSW. The proponent holds Crown Lease 202091 for Marina and Marina Berthing (commercial marina, fuel storage/supply, reclamation and restaurant) over the subject site. Clause 32 of Lease 202091 requires the proponent to obtain the department's consent for the lodgement of any DA, which had not been carried out prior to the lodgement of the DA. On 2 May 2019 owners consent for the DA was obtained from DPI – Crown Lands and Water. No further objection to the proposed development was raised in this regard.

Department of Primary Industries (DPI) – Marine Parks

The DA was referred to DPI – Marine Parks for concurrence in accordance with Section 55 of the *Marine Estate Management Act 2014*. In response, it was noted that the subject site is located within the special purpose zone, and no objection is raised to the proposed development, subject to the incorporation of concurrence conditions including; obtainment of a marine park permit, installation of erosion and sediment controls, protection of vegetation, compliance with a water quality monitoring regime, minimisation and management of waste and management of machinery.

Office of Environment and Heritage (OEH)

The DA was referred to OEH due to the proximity of the proposed development area to aboriginal artefacts and place of significance. In response, OEH noted that the agency does not hold any regulatory role in the assessment of the development application and had no comment to make on this occasion.

MATTERS FOR CONSIDERATION – SECTION 4.15

Relevant legislation

Environmental Planning and Assessment Act 1979 (EP&A Act)

Section 4.10 Designated Development

Section 4.10 of the EP&A Act provides that development is designated development if it is declared to be designated development under an EPI or the EP&A Regulations. See further assessment under Schedule 3 of the EP&A Regulations below.

Division 4.11 Existing uses

Division 4.11 Section 4.66 *EP&A Act* allows for the continuance of existing use and s.4.67 *EP&A Act* allows the regulations to make provision for alterations and additions, and enlargement or expansion or intensification of an existing use. The relevant provisions of Division 4.11 are considered below:

Section 4.65 - Definition of "existing use"

The subject site is zoned W2 Recreational Waterways and part B1 Neighbourhood Centre. The proposed development is located on land zoned B1 Neighbourhood Centre, whereby a 'marina' is not listed as a permissible land use. A marina is defined as:

- a permanent boat storage facility (whether located wholly on land, wholly on a waterway or partly on land and partly on a waterway), and includes any of the following associated facilities:*
- (a) any facility for the construction, repair, maintenance, storage, sale or hire of boats,*
 - (b) any facility for providing fuelling, sewage pump-out or other services for boats,*
 - (c) any facility for launching or landing boats, such as slipways or hoists,*
 - (d) any car parking or commercial, tourist or recreational or club facility that is ancillary to the boat storage facility, any berthing or mooring facilities*

Whilst the proposed development essentially comprises alterations and additions to the existing recreational club and commercial building, having regard to the above definition and previous approvals, it is considered that the existing development is appropriately categorised as a marina. The existing marina falls within the definition of "existing use" as the development of a "marina" was approved under 7-1981-625-1 and was permissible with consent on the subject site under the environmental planning instruments (EPI) in place at the time. Various subsequent development consents issued since this time, as identified in the site history section of this report, provide sufficient evidence to certify that a marina has been operating with approval on the site for more than 60 years.

Section 4.66 provides the requirements for the continuance of and limitations on an existing use. The marina (including the commercial/recreational club building) has operated continuously since its construction and has not been "abandoned".

The 'existing uses' provisions contained in Part 5 of the EP&A Regulation are addressed in further detail below. Based on the above, the proposed development satisfies the relevant provisions of Division 4.11. In summary, the existing marina use was lawfully established and has not been abandoned. Accordingly, subject to the granting of development consent, the existing recreational club and commercial building may be expanded within the definition of a 'marina' use.

Environmental Planning and Assessment Regulation 2000 (EP&A Regs)

Part 5 of the EP&A Regs contains the relevant provisions for existing uses. The clauses relevant to the proposal are discussed below.

Clause 41 – Certain development allowed

Pursuant to Clause 41(1)(b) the application seeks approval for extension to the existing club and commercial building associated with the marina use.

Clause 43 – Development Consent required for alteration or extension of building and works

Development consent is sought for the extension of the existing club and commercial building within the marina use, on land on which the existing use was carried out immediately before the commencement of PSLEP2013 which was the instrument having the effect of prohibiting the existing use.

Based on the above, the proposed development satisfies the relevant clauses of Part 5. Accordingly, the existing club and commercial building may be expanded within the definition of a “marina” use.

Schedule 3 Designated Development

Schedule 3 of the EP&A Regs includes certain categories of marinas as being designated development. Alterations and additions are not considered designated development if, in the opinion of the consent authority, they do not significantly increase the environmental impacts of the total development. In this regard, the consent authority is of the opinion that the proposed extension is not considered designated as it involves a minor extension of the commercial building, does not increase the number of moorings or berths and does not increase the environmental impacts by way of impacts to the waterways, coast or neighbouring land uses.

s4.15(1)(a)(i) – The provisions of any EPI**State Environmental Planning Policies****State Environmental Planning Policy No.55 (Remediation of Land) (SEPP No.55)**

Clause 7(1) (b) and (c) of SEPP No.55 require that where land is contaminated, Council must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed. If the land requires remediation Council must be satisfied that the land will be remediated before the land is used for that purpose.

In 2012 the EPA advised that the site has been reported under the *Contaminated Lands Management Act* for contamination on top soil (likely)/ground water (confirmed), however, in November 2015 the EPA confirmed that the 2012 advice had been issued in error. The contaminated land notification (under the *Contaminated Land Management Act 1997*) applied to the Cove Marina Site and not the subject site.

The development site has been historically used as a slipway for boating purposes, a use that has potential to lead to contamination. However, the development site has been responsibly managed and continuously monitored over its lifespan and as such the development site has not been identified as containing any contaminants. Accordingly, it is considered that the land is not contaminated and the proposal is consistent with the requirements of SEPP No.55. A condition of consent has been recommended in the report to Council requiring further testing be carried out in the event that contamination is discovered during works.

State Environmental Planning Policy No.62 (Sustainable Aquaculture) (SEPP No.62)

SEPP No.62 aims to encourage sustainable aquaculture, including sustainable oyster aquaculture. Given the proximity of the proposed development to existing oyster leases, Part 3A Consideration of effects of proposed development on oyster aquaculture must be considered.

Clause 15B of the Policy requires that, prior to determination of a development application, Council must consider if the development will have any adverse effects on oyster aquaculture development. Further, if the development will have an impact, notice shall be given to the Director General of the Department of Primary Industries DPI Fisheries. The proposal was referred to Council's natural resources section for review, finding that no impacts were likely to occur to oyster leases. In addition, the application was referred to DPI Fisheries and no objection was raised to the development.

State Environmental Planning Policy (Coastal Management) 2018 (Coastal SEPP)

The subject land is located within the Coastal Environmental Area and Coastal Use area as such the following general matters are required to be considered when determining an application.

As per Clause 13 of the Policy, development consent must not be granted for development within the coastal environment area unless the consent authority has considered whether the development will cause impact to the integrity of the biophysical and ecological environment, the values and natural coastal processes, marine vegetation, native vegetation and fauna and existing public open space and access to and along the foreshore.

The application includes the submission of an aquatic assessment, seagrass impact assessment and threatened shorebirds assessment of significance. The proposal was reviewed by Council's natural resources section, finding there to be no significant impacts to the biophysical and ecological environment, or any natural coastal processes. The seagrass impact assessment and threatened shorebirds assessment confirms that no significant impacts are to occur to marine or terrestrial vegetation and fauna. In addition, the development includes adequate stormwater and erosion sediment controls. The proposal would not impede access to the foreshore, as it is confined to the existing footprint of the marina and associated slipway.

As per Clause 14 of the Policy, development consent must not be granted for development unless the consent authority has considered existing and safe access to and along the foreshore, overshadowing and loss of views, visual amenity and scenic qualities and heritage values. The consent authority must also be satisfied that the development is designed and sited to avoid adverse impacts and to ensure the development has taken into account the surrounding built environment in its design.

The proposed development is an appropriate type and design for the coastal location. The proposal maintains the existing use of the site as a marina and the extension provides a sustainable built form which ensures that the visual amenity of the coast is protected. The building envelope and size of the development is also compatible with the natural setting and will not adversely impact views. Therefore the application would generally comply with the aims of the SEPP and the other matters for consideration stipulated under Clause 13 and 14, and can therefore be supported.

Local Environmental Plan

Port Stephens Local Environmental Plan 2013 (LEP)

Clause 2.3 – Zone objectives and land use table

The subject site is zoned W2 Recreational Waterways and part B1 Neighbourhood Centre. The proposed development is located on land zoned B1 Neighbourhood Centre, whereby the objectives of the zone include to provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood. Whilst a 'commercial premises' is a permissible land use in this zone, the proposed development essentially comprises alterations and additions to the existing recreational club and commercial building. Having regard to the previous approvals, it is considered that the existing development is appropriately categorised as a marina. To facilitate the permissibility of the proposed development, the 'existing use' provisions contained in Division 4.11 EP&A Act and Clause 44 EP&A Regulation are being utilised, as discussed above.

Broadly, the proposed development is consistent with the objectives of the B1 zone as will provide additional commercial, social and recreation uses that serves the local community without significantly impacting on the natural environment.

Clause 5.2 Classification and reclassification of public land

No. 2A Sunset Boulevard, Soldiers Point (Pt Lot 2071 DP 852662) is classified as operational land in accordance with the *Local Government Act 1993* (NSW) which was gazetted 17 June 2016 in order to facilitate a future licence agreement with Soldiers Point Marina. The zoning of this lot is B1 Neighbourhood Centre under the LEP. These proposed amendments are contained within the LEP titled Amendment No.10, which was supported by Council at the Ordinary Meetings of 12 May 2014 and 14 October 2015. Due to the proposed development incorporating works on Council land, owners consent from Council was received, and the application will be reported to the ordinary Council for determination.

Clause 5.10 – Heritage conservation

The objectives of cl.5.10 include the conservation of Aboriginal objects and Aboriginal places of heritage significance. Consent is required for works which will result in impacts to items of heritage significance and where a site is identified as an Aboriginal place of heritage significance the consent authority is required to consider the effect of the proposed development upon the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment. Further, the consent authority must notify the local Aboriginal communities of the applicant in writing or by another manner as may be appropriate and consider any response received.

The Soldiers Point area is a highly significant landscape to the Worimi people. A search of the Aboriginal Heritage Information Management System (AHIMS) database confirms that there are two Aboriginal sites and one Aboriginal place within a 50m buffer in or near the overall marina site. The Aboriginal place is formally known as Soldiers Point Aboriginal Place (gazette number: 55). The development site immediately borders the adjoining the Soldier Point Aboriginal Place to the north east and east, however no works are proposed at its location. It is further noted that the proposed development will be located within the building footprint of existing slipway, which consists of concrete hardstand surface and sheds. Written notification of the development was issued to Worimi Local Aboriginal Land Council and no response received. In addition, the referral was sent to the Office of Environment and Heritage. In response, OEH noted that in this instance the agency does not hold any regulatory role in the assessment of the development application and had no comment to make on this occasion. Overall, it is considered that the proposal will not impact on the significance of these Aboriginal Sites or Places.

Clause 7.1 – Acid Sulfate Soils

The subject site is located on land mapped as Acid Sulfate Soils class 1 and 4. The applicant has provided a Geotechnical Assessment prepared by JK Geotechnics (dated: 14 November 2018). Based on the investigation results, it is recommended that the new building be supported on footings founded in the bedrock/cemented sands. With regard to acid sulfate soil however, driven piles do not generate spoil. As the proposed works are below water and unlikely to be exposed to oxygen, the risk has been identified by low. It is considered that the development site is suitable for the proposal subject to recommended conditions relating to the preparation of an Acid Sulfate Soils Management Plan. This condition has been included in the recommended conditions of consent to be reported to Council.

Clause 7.2 – Earthworks

The objectives of clause 7.6 are to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. The proposed development includes earthworks associated with the levelling of the building footprint and removal of the existing concrete on the east of the development site and pile driven foundations. The application included a Geotechnical Investigation Report and erosion and sediment control plan which detail how earthworks would be managed during construction.

In response to the objective of Clause 7.2, the proposed development is satisfactory against the matters for consideration under Clause 7.2(3), as it:

- Will not significantly disrupt or have a detrimental effect on drainage patterns and soil stability in the locality of the development;
- Will enable opportunity for the future use and redevelopment of the land;
- Will be restricted to fill which is VENM, ENM or any other waste-derived material the subject of a resource recovery exemption;
- Have minimal effect on the existing and likely amenity of adjoining properties;
- Will include restrictions and/or quality assurance requirements relating to the source of fill material;
- Has a low likelihood of disturbing relics; and
- Has a low likelihood of adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area.

To this extent, it is considered that development consent can be granted in accordance with Clause 7.2 of the LEP as the consent authority is satisfied that matters outlined in Clause 7.2(3) have been appropriately addressed, subject to recommended conditions relating to; the preparation of a Construction Environmental Management Plan, landscaping, erosion and sediment controls, soil stability and dust control and quality and source of fill. These conditions have been included in the recommended conditions of consent to be reported to Council.

Clause 7.3 – Flood Planning

The objectives of this clause are to minimise flood risk to life and property and avoid significant adverse impacts on flood behaviour and the environment, while allowing development on land that is compatible with the flood hazard.

The subject site is located on flood prone land - high hazard flood fringe and the relevant Flood Planning Level (FPL) for the site is 3.3m. The ground floor of the development, including the proposed lounge/kitchen includes a finished floor level of 2.84m AHD which is 0.46m below the FPL. The proposal has been assessed by Council's engineering section and found to be compatible with the flood hazard of the land and subject to recommended conditions relating to a flood risk management plan would include appropriate measures to manage risk to life from flood. The proposal would not significantly affect flood characteristics of the land and would not cause adverse effect to the environment or cause significant erosion or reduced stability of the waterfront land. Subject to recommended conditions relating to flood design precautions, the proposal is considered consistent with the requirements of Clause 7.3. The conditions have been included in the recommended conditions of consent to be reported to Council.

Clause 7.6 – Essential services

Clause 7.6 requires that the consent authority ensures that essential services are available or that adequate arrangements can be made for such services. Essential services are available to all sites subject to this development application.

Clause 7.9 – Wetlands

The objective of Clause 7.9 is to ensure that wetlands are preserved and protected from the impacts of development. The proposed development is within a mapped wetland area and therefore the consent authority must consider the requirements of Clause 7.9 before determining the application. Assessment of the proposal found there to be no significant impacts to the biophysical and ecological environment, or any natural coastal processes and the proposal is considered consistent with the requirements of this clause.

s4.15(1)(a)(ii) – Any draft EPI

The proposed Remediation of Land SEPP is intended to repeal and replace State Environmental Planning Policy No. 55 – Remediation of Land (SEPP No.55). The draft SEPP, which was exhibited from 25 January to 13 April 2018, is currently under consideration. The proposed SEPP seeks to provide a state-wide planning framework to guide the remediation of land, including: outlining provisions that require consent authorities to consider the potential for land to be contaminated when determining development applications; clearly lists remediation works that require development consent; and introducing certification and operational requirements for remediation works that may be carried out without development consent.

Consideration has been given to the suitability of the site with respect to potential land contamination under the SEPP No.55 discussion elsewhere within this report. The subject site has been identified as suitable for the proposed development and further investigation in respect to contamination is not warranted in this instance.

s4.15(1)(a)(iii) – Any DCP

Port Stephens Development Control Plan 2014

The Port Stephens Development Control Plan 2014 (DCP) is applicable to the proposed development and has been assessed below.

Section A.12 – Notification and Advertising

The application was originally notified and advertised for a period of 14 days between 24 January 2019 and 7 February 2019. The application was re-advertised for a period of 14 days between 14 February 2019 and 28 February 2019. During the combined advertising and notification period, 40 submissions inclusive of 31 standard submissions, 9 pro-forma submissions, with a total of 44 signatures were received in relation to the proposed development.

The issues raised in the submissions have been addressed in detail below.

Section B – General Controls

Part B2 – Natural resources

The application includes the submission of an aquatic assessment, seagrass impact assessment and threatened shorebirds assessment of significance. The proposal was reviewed by Council's natural resources section, finding there to be no significant impacts to the biophysical and ecological environment, or any natural coastal processes. The seagrass impact assessment and threatened shorebirds assessment confirms that no significant impacts are to occur to marine or terrestrial vegetation and fauna. Furthermore, the development incorporates adequate stormwater and erosion and sediment controls. Overall, the application is considered to be consistent with Part B2 of the DCP, subject to recommended conditions relating to the preparation of a Construction Environmental Management Plan and the protection of existing vegetation and trees during construction. These conditions have been included in the recommended conditions of consent to be reported to Council.

Part B3 – Environmental management

B3.A Acid Sulfate Soils

Refer to clause 7.1 discussion elsewhere in this report. The proposed development does not result in adverse impacts to Acid Sulfate Soils.

B3.B Air Quality

The proposed development shall not result in impacts to air quality as a result of dust or odour either during construction or whilst in operation. An air quality report is not required for this type of development under DCP2014.

B3.D Earthworks

Refer to clause 7.2 discussion elsewhere in this report. Subject to the implementation of sediment and erosion controls and the construction and environment management plan the proposed development is considered consistent with the requirements of Part B3 of the DCP.

Part B4 – Drainage and water quality

The application included the submission of a stormwater management plan, which has been reviewed by Council's engineering section. The water quality modelling submitted with the application demonstrates improved water quality for the site and appropriate management of water quantity. The proposed development is considered to be consistent with the requirements of Part B4 of the DCP subject to conditions relating to; the provision of detailed stormwater engineering plans, operational stormwater management plans and other standard conditions. These conditions have been included in the recommended conditions of consent to be reported to Council.

Part B5 – Flooding

Refer to clause 7.3 discussion elsewhere in this report. The subject site is located on flood prone land - high hazard flood fringe. Following discussion elsewhere in this report against the PS LEP, the proposal is considered compatible with the flood hazard and is consistent with Part B5 of the DCP, subject to recommended conditions of consent relating to the preparation of a flood risk management plan and other flood design related precautions. These conditions have been included in the recommended conditions of consent to be reported to Council.

Part B6 – Essential services

Refer to clause 7.6 discussion elsewhere in this report. Essential services are provided to the development site subject to the application.

Part B8 – Heritage

Refer to clause 5.10 discussion elsewhere in this report. There is a registered Aboriginal place located immediately to the north east and east of the development site, however no works are proposed at its location. The proposed development will be located within the building footprint of existing slipway, which consists of concrete hardstand surface and sheds. Due to the proximity of the proposal to the registered site, the referral was sent to the Office of Environment and Heritage. In response, OEH noted that in this instance the agency does not hold any regulatory role in the assessment of the development application and had no comment to make on this occasion. Overall, it is considered that the proposal will not impact on the significance of these Aboriginal Sites or Places and is considered consistent with Part B8 of the DCP.

Part B9 – Road network and parking

Car parking:

The application included a traffic and car parking report. The proposed development incorporates an extension of the existing use associated with the users of the current moorings and does not increase the number of moorings, which is what triggers car parking requirements in accordance with the DCP. The proposed changes are not expected to generate additional employment with the lounge and gym facilities (self-managed) and will operate in a similar manner to those provided in a hotel / motel. Further, the facilities are proposed to only be used by customers of the marina who have their boats moored and a condition of consent has been recommended to enforce this. Having regard to the DCP controls, it is considered that the proposed development is not a generator of traffic or parking in its own right and therefore no additional car parking is required to support the proposed development.

Traffic Impacts:

In line with the commentary regarding car parking, the proposed extension to the marina is to be used by users of the existing moorings and does not increase the number of moorings. Therefore, it is considered that the development would not result in increased traffic generation and the existing road network would not be adversely impacted by the proposal. Overall, the proposal is considered consistent with the requirements of Chapter B9 of the DCP.

Section C2 – Commercial

Reference	Requirement	Comment
C2.1	Building height is provided in accordance with PSLEP2013 clause 4.3.	The subject site is subject to a maximum height limit of 8m under the Port Stephens Local Environmental Plan 2013. The development includes a maximum height of 8m which remains compliant with this Clause, and therefore meets the requirements of this chapter.
C2.2 - C2.3	Minimum ground floor to ceiling height for all new development within a commercial zone is 3.5m. Minimum first floor to ceiling height for all new development within a commercial zone is 3.5m.	As per the plans provided, the proposal includes a minimum floor to ceiling height of 2.4m which is non-compliant with this provision. It is noted that the subject site is limited to a total height of 8m, and the building has been design to meet the requirements of the LEP height limit. The non-compliance of ceiling height is considered suitable in this instance, as it will not impede on or restrict potential future uses, and is considered consistent with existing marina. The proposal is considered to meet the objectives of this chapter and therefore considered suitable in this instance.
C2.7 - 2.10	Development is built to the front property line for ground and first floor. Parts of building may give variation in setback to provide design articulation.	Although the building does not contain a zero setback from the front property boundary, the setback is consistent with the existing marina and is considered appropriate for the subject site and surrounds. The front setback area features landscaping which provides continuity between the building and the street.
C2.11	Development should be built to the side boundary to maximum continuous activated street frontage except where side access is provided.	The site is not located in an area that requires a continuous activated street frontage, as the proposal is for an extension to a standalone waterfront marina. The remainder of the side setback is utilised for the purposes of boat moorings.
C2.12	Commercial premises adjacent to a lot that is zoned or used for residential purposes is to provide a minimum rear setback of 5m, plus an additional 0.5m for each meter of the height of the building that exceeds 8m.	The rear boundary of the subject site extends approximately 90m into the water to the west, therefore this clause is not applicable to the proposed development.

C2.15 – C2.16	<p>Building mass does not result in unreasonable loss of amenity to adjacent properties or public domain</p> <p>Building proportion is complimentary to the form, proportions and massing of existing building patterns.</p>	<p>The proposed development, has been designed appropriately for the coastal location</p> <p>The extension of the building is complimentary to the existing building and other developments within the locality. The proposal will not result in an unreasonable loss of amenity of the coastal environment, and is considered to be of benefit and interest to the current streetscape.</p>
C2.17 – C2.21	<p>Building facades use materials, colours and architectural elements to reduce bulk and scale that are complimentary to existing built-form and natural setting</p> <p>Development provides continuity of an active street frontage for localities where business premises predominantly face the street.</p> <p>An active street frontage provides the following:</p> <ul style="list-style-type: none"> • Maximum unarticulated wall is 2m in length • Maximum 50% of ground floor front is windows, which does not include false windows <p>Development incorporates CPTED principles by providing passive surveillance to public spaces through building design and orientation</p> <p>Development provides pacing to the public footpath for the entire length of the development street frontage</p>	<p>The proposed building façade utilises architectural elements, including framed entry points, varied materials and textures and a suitable colour pallet to actively engage the streetscape, reduce bulk and scale, whilst being complementary to the natural coastal setting.</p> <p>The development provides an active street frontage, including an extension of the existing wrap around veranda of the existing marina to improve articulation and create an active street frontage.</p> <p>CPTED principles have been suitability integrated, and passive surveillance of the streetscape is readily achieved. Paved footpaths are provided between the development and existing car parking.</p>
C2.22	Awnings must be provided over pedestrian pathways	Shelter is provided at the entrance of the building by the first floor veranda. Due to the nature and location of the development, an awning over the pedestrian pathway is not considered necessary.
C2.23 - C2.24	Provide a recognisable entry from the primary street	The subject site is clearly and reasonably accessible and identifiable from the streetscape, through use of framed architectural features at the entry point of the building.
C2.25	Building facilities and services are to be located in areas that are not visible from the street or public spaces.	All plant equipment and storage areas are located out of view from public places

C2.31- C2.35	<p>Landscaping is provided as follows:</p> <ul style="list-style-type: none"> • 10% of the site area consisting of deep soil planting <p>30% shading over car park areas</p> <p>Landscaping is in accordance with the following:</p> <ul style="list-style-type: none"> • Works incorporate adequate screening from the street and adjacent neighbours • Tree and landscape planting shall be of a scale and extent that reflects the scale of the proposed development's buildings and pavement areas <p>Structural soil and/or structural cells should be used to reduce competition between specimen trees and infrastructure</p>	<p>The existing marina has very little landscaping areas. The proposed extension incorporates additional landscaping which will improve the visual amenity of the development and streetscape. The landscaping will also improve visual screening of the adjacent boat storage area.</p>
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s4.15(1)(a)(iiia) – Any planning agreement or draft planning agreement entered into under section 7

There are no planning agreements that have been entered into under section 7.4 relevant to the proposed development.

s4.15(1)(a)(iv) – The regulations

The relevant clauses of the regulations are discussed elsewhere within the report as the proposal relies on the Part 5 provisions of the EP&A Regulations for existing use rights.

s4.15(1)(b) – The likely impacts of the development

Social and Economic Impacts

The proposal is considered to have positive social and economic impacts. The development provides ancillary and improved services to existing customers of the marina. It will assist in providing short-term employment during the construction phase and long-term job security for existing staff associated with the servicing of the development once constructed.

Impacts on the Built Environment

The proposed development is an appropriate type and design for the coastal location. The proposal maintains the existing use of the site as a marina and the extension provides a sustainable built form which ensures that the visual amenity of the coast is protected. The building envelope and size of the development is also compatible with the natural setting and will not adversely impact views.

Impacts on the Natural Environment

The proposed development involves no significant impacts to the biophysical and ecological environment, or any natural coastal processes. The application adequately demonstrates that any impacts resulting from the proposal can be adequately managed during construction and ongoing operation of the development.

s4.15(1)(c) – The suitability of the site

The subject site is considered suitable for the proposed development for the following reasons:

- The proposal is for an extension to the existing use of the site.
- The proposed extension includes a design that is sympathetic and appropriate for the coastal location, which ensures the visual amenity of the coast is maintained.
- The site is an appropriate size and dimension to facilitate the proposed development.

Based on the above, the site is considered suitable for the development.

s4.15(1)(d) – Any submissions

The application was originally notified and advertised for a period of 14 days between 24 January 2019 and 7 February 2019. The application was re-advertised for a period of 14 days between 14 February 2019 and 28 February 2019. During the combined advertising and notification period, 40 submissions inclusive of 31 standard submissions, 9 pro-forma submissions, with a total of 44 signatures were received during the notification and advertising period in relation to the proposed development.

The concerns raised regarding the development during this period are summarised below:

Issue	Response
<p><u>Community consultation and notification</u></p> <ul style="list-style-type: none"> - Lack of community consultation in preparing the DA, which led to community confusion and lack of accountability, which could create accusations against Council. - Limited information was provided during public notification of the DA by Council (information was hard to access). - Public notifications were incorrectly worded and posted such as the failure to include full addresses and relevant details. - Public participation is a fundamental part of the EP&A Act, failure to properly advertise public notification is seen as improper administration of the Act by Council. - All documents were requested to be in hard copy for review during the notification and advertising period. Council has suddenly imposed restrictions on the provision of hard copy documentation which does not allow the general public full participation under the EP&A Regulation. 	<ul style="list-style-type: none"> - The public notification and advertising process was undertaken by Council in accordance with the adopted policies. - Council no longer requests hard copies of the associated documentation from the Applicant upon lodgement of a development application (DA). This process commenced on 1 June 2015, as detailed on Council's website. In this regard, Council no longer delivers hard copies of the DA and associated documentation to the Tomaree Library and Community Centre. - Due to the concerns raised by the community regarding review of the DA documentation, one hard copy of the development plans were made available within the Tomaree Library and Community Centre. A copy of the reports associated with the application were not made available due to their size, however it is noted that these were still available either on either DA Tracker or USB at the Library for review.

Previous DA and non-compliance history of the site

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| <ul style="list-style-type: none"> - Proponent of the Marina has demonstrated no respect to the community's values and views, nor respect given to Port Stephens Council. - The proponent has shown disregard with applicable legislation and regulations in the past regarding the Marina being issued penalty notices by the EPA. Additionally, the proponent has erected illegal boom gates on a public site and has erected piles on the development site without consent. - Previous marina development(s) affected the water flow and sandbank erosion causing significant changes in the sand and sea grass. | <ul style="list-style-type: none"> - Allegations regarding the proponent of the Marina and perceived behaviour are not a relevant planning consideration of the DA. - The previous Marina developments were approved by Council, after assessment against the relevant requirements of the legislation at the time. Any departure from the imposed conditions of consent may result in compliance action against the proponent. Allegations relating to non-compliance with historic DA approvals is a matter for investigation and action by Council's Compliance Section and other relevant Government agencies. However, it is noted that no additional detail has been provided within the submission to support these allegations. - The proposal is considered under a new DA and is therefore assessed separately on its own merit. The proposed extension to the marina has been assessed with regard to potential impacts to the aquatic environment, including impact to waterflow, seagrass and sand bank erosion. The aquatic assessment and construction management methodology submitted with the application have been found to accurately assess environmental impacts and subject to the recommended conditions of consent, the application would not cause adverse impact to the aquatic environment or coastal land. |
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<p><u>Unclear lot ownership details</u></p> <ul style="list-style-type: none"> - Lease agreements and land tenure provided misguided and unclear information. - Development application form neglected to include three sites, including 2A Sunset Boulevard (LOT: 2071 DP: 852662), 2A Ridgeway Avenue (LOT: 321 DP: 636840) and 9 Mitchell Street (LOT: 322 DP: 636840). 	<ul style="list-style-type: none"> - The correct land titles and deposited plans owned or leased by the proponent are provided below: <ul style="list-style-type: none"> o 2A Sunset Boulevard, Soldiers Point (Lot 2071 in DP 852662). o 2A Ridgeway Avenue, Soldiers Point (Lot 321 in DP 636840). o 2C Ridgeway Avenue, Soldiers Point (Lot 539 in DP 823769). o 2E Ridgeway Avenue, Soldiers Point (Lot 1 in DP 1058490). o 2F Ridgeway Avenue, Soldiers Point (Lot 2 in DP 1058490). o 2 Sunset Boulevard, Soldiers Point (Lot 197 in DP 27084). o 9 Mitchell Street, Soldiers Point (Lot 322 in DP 636840). - An amended Development Application form was received from the applicant, including all sites affected by the development, noting that the abovementioned leased site at 2 Sunset Boulevard is not affected by the current proposal. - It is noted that at the time of DA lodgement, the above titles of land were not identified on the DA form. To rectify this matter, two applications for owners consent for development were lodged. These applications were lodged to the Department of Primary Industries (DPI) – Lands and Water on 19 February 2019 for land under Crown Lease 202091 and Council’s Property Services Section on 5 March 2019 for Lot 321 in DP 636840 and Lot 322 in DP 636840. Owners consent from Council and DPI (Lands and Water) have been provided. An amended DA form has also been provided to clarify the property details of the proposed development.
<p><u>Access issues</u></p> <ul style="list-style-type: none"> - The proposal will restrict further public access to the foreshore between the marina site and Soldiers Point boat ramp and is already compromised due to the illegal installation of a boom gate on public land. - Pedestrians are forced to share the roadway for access to the marina and foreshore as there is limited footpath infrastructure. 	<ul style="list-style-type: none"> - The proposed development occupies land already utilised as a slipway which has historically impeded access to the foreshore. As the proposal is confined to these areas, access to the foreshore is not further impeded. - The proposal would not result in any further impact to the existing pedestrian environment.

Integrated development approvals

- The proponent did not obtain the necessary approvals and licenses applicable for the site prescribed under Integrated Development provisions, these approvals/licenses included:
 - o National Parks and Wildlife Act 1974: Obtain an Aboriginal heritage impact permit to erect structures upon a declared Aboriginal Place.
 - o Crown Land Management Act 2016: Obtain owners consent from Department of Industry – Lands and Water for development on Crown land.
 - o Coastal Management Act 2016: consent authority (Council) must consider impacts of development on land within the coastal use area, including development within an Aboriginal Place.
 - o EP&A Regulation 2000: development consent required from consent authority (Council) for changes of existing uses:
 - a. any change of an existing use to another use, and
 - b. in the case of a building, work or land that is used for different existing uses, for any change in the proportion in which the various parts of the building, work or land are used for those purposes.
- Section 4.46 of the EP&A Act states that Integrated Development is development that, in order for it to be carried out, requires development consent and one or more approvals/permits from relevant government agencies. As detailed in the referrals section of this report, an approval permit was requested from DPI (Fisheries Management Act 1994). Correspondence with these agencies determined that no other government agency approvals were required in the case of the proposed development
 - An Aboriginal heritage impact permit was not required as the proposal will not disturb land identified as an Aboriginal Place on 9 Mitchell Street (Lot 322 in DP 636840), with the majority of works to be undertaken on 2A Ridgeway Avenue (Lot 321 in DP 636840) and 2C Ridgeway Avenue (Lot 539 in DP 823769). Nevertheless, referral to the Office of Environment and Heritage was carried out to ensure all matters relating to Aboriginal Heritage were reviewed. An advisory note is recommended to be incorporated on any consent requiring works to cease and studies to be undertaken in accordance with the requirements of *National Parks and Wildlife Act 1976*, should any evidence of Aboriginal items or relics be found on the development site or adjoining parcels of land during these.
 - Obtaining owners consent is not regarded as “Integrated Development”, it is considered as concurrence to a government agency and is categorised within ‘local development’.
 - The proposal is seeking permissibility through existing use rights for expansion of the existing club building pursuant to Clause 41 and Clause 43 of the EP&A Regulation. Council is the determining authority for permissibility in this regard, and is not considered Integrated Development.

Designated development

- The proposal should be categorised and assessed as an alteration or addition that forms part of a designated development being the existing Marina complex pursuant to Clause 35 and Clause 36 of Schedule 3 of the EP&A Regulations.
- Having regard to the nature of the works proposed, Council is of the opinion that the proposed development is not classified as designated development and does not trigger Clause 23 of Schedule 3 of the EP&A Regulation. Clause 23 of Schedule 3 of the EP&A Regulation defines a marina being designated development when various thresholds are surpassed. These thresholds include *shoreline facilities that moor, park or store vessels at fixed or floating berths, at freestanding moorings, alongside jetties or pontoons, within dry storage stacks or on cradles on hardstand areas.*
 - The proposed development is for the expansion of the clubhouse only and does not propose to physically expand, change or alter the existing approved marina (moorings or boating facilities) complex. Therefore, it does not meet any of the listed thresholds and so does not comprise designated development under this Clause.

Contamination, geotechnical and acid sulfate soils (ASS)

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| <ul style="list-style-type: none"> - Requirement for an ASS plan. - Remove excavated material from the site and do not reuse on-site. Analysis of material should take place when removed from the site. - Extra berths and the concrete groyne structure within the marina from previous DA's have caused a change in tidal currents, creating sandbank erosion. These structures should be removed to facilitate sandbank regeneration and natural tidal flows. - The proponent has not undertaken satisfactory investigation of the impacts from the proposal on erosion and water flow to the sandbank and foreshore. - Structural loads were not provided in the Geotechnical Report for the proposed pool. - The proposal has not addressed how contaminated soil from the previous slipway use will be removed which utilised various adverse chemicals such as anti-fouling paint. - No evidence has been provided to demonstrate how the applicant will mitigate negative impacts of drilling and pile driving on neighbours. | <ul style="list-style-type: none"> - Previous marina developments were approved by Council, satisfying environmental mitigation measures applicable at the time and are not a relevant matter for consideration as part of this DA. The current proposal does not seek to change, alter or undertake any work on the existing marina structure. The existing concrete groyne structure within the slipway will be partially demolished and removed. Ultimately, this will assist in improving the regeneration of the sandbank and natural tidal flows. - Impacts on coastal erosion and water flow were considered within the accompanying Aquatic Assessment report prepared by Coast Ecology. Section 9 Mitigation Measures provided details on the management of erosion and waterflow impacts during construction and operation of the proposal. Council is satisfied with these measures and recommends incorporation into any development consent. - The Geotechnical Investigation Report prepared by GK Geotechnics provided adequate bearing loads for the proposal, i.e. 800kPa. Accordingly, the pool and spa will be supported by the pile footings and are not anticipated to exceed the recommended bearing pressure. - The accompanying Preliminary Environmental Screening report prepared by Environmental Investigation Services identified the historic potential contaminates on the site from the slipway use. The report undertook sampling to detect the extent of contaminates identifying copper and zinc, however, these contaminates were below levels considered to pose a risk to environmental receptors. The report also recommended appropriate mitigation measure for disposing potentially contaminated soils such as <ul style="list-style-type: none"> o Additional waste classification for off-site disposal of soil excavated as part of the development; o Preparation of an ASS plan; o Preparation of a hazardous materials assessment report for the marina building(s). |
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	<ul style="list-style-type: none"> - Conditions are recommended to be incorporated onto any consent, relating to these measures prior to the commencement of works.
<p><u>Disabled access</u></p> <ul style="list-style-type: none"> - Is a lift being incorporated to ensure wheelchair and disabled access is achievable? - How can disabled access be achieved when the deck level is RL2.04 and the new deck of RL2.84? - How can disabled access be achieved to the swimming pool? 	<ul style="list-style-type: none"> - A lift will be provided as a part of the development to facilitate an accessible path of travel to the new building. The introduction of the lift will also improve access for people with disabilities to the existing building.
<p><u>Car parking non-compliance and issues</u></p> <ul style="list-style-type: none"> - Additional traffic generated by the proposal will place pressure on the parking supply in the area. - The proposal has argued that no additional car parking is required due to no increase in jobs or moorings. However, the current (historic) deficit is not acceptable and is significantly impacting on surrounding residents on Ridgeway Avenue and Sunset Boulevard. - The proposal will create additional jobs and the new club facilities will create incentive for new guests increasing car parking demand. - The proponent has displayed an ongoing disregard for compliance with car parking. - The marina is 71 parking spaces short of the requirements under the DCP. 	<ul style="list-style-type: none"> - The proposed development incorporates an extension of the existing club house and does not increase the number of moorings, which is what triggers car parking requirements in accordance with the DCP. The proposed changes are not expected to generate additional employment with the lounge and gym facilities (self-managed) and will operate in a similar manner to those provided in a hotel / motel. Further, the facilities are proposed to only be used by customers of the marina who have their boats moored and a condition of consent has been recommended to enforce this.

Compliance with LEP and DCP

- The use of a marina is prohibited under the sites current B1 Neighbourhood Centre zoning.
- Intrusion into RE1 zoned land is not an appropriate use of land.

- The marina component of the existing development was lawfully approved and has operated as a marina since the 1940's, well before much of the surrounding lands were developed for residential use.
- The subject site is zoned B1 – Neighbourhood Centre and a marina is prohibited use. The current zone on the site came into effect in 2013 with the gazettal of Port Stephens Local Environmental Plan, 73 years after the marina first commenced operations.
- The existing marina has operated continuously since its approval, and the current proposal is seeking permissibility through the 'existing use rights' provisions pursuant to Clause 41 and Clause 43 of the EP&A Regulations..
- The proposal has been assessed against the core objectives of both community and operational land under the *Local Government Act 1993*. Additionally, the proposal has been designed to ensure both the community and operational land is readily accessible to Council and the community and will result in improved built form, functionality and connectivity to the foreshore.
- It is noted that any alleged non-compliance with conditions of consent for the existing use of the land (including the boom gates) is not relevant to the consideration of this application.
- The development footprint is wholly located within the B1 – Neighbourhood Centre and W2 Recreational Waterway Zones. The proposal does not extend within the RE1 zone.

<p><u>General insufficient environmental impact details</u></p> <ul style="list-style-type: none"> - The supporting information of the Development Application is misleading. This misleading information contains to the proclaimed suitability of the proposed structures, proclaimed reduced traffic flow and proclaimed reduced environmental impact to the marine environment. - The proposed development is considered to not have investigated or satisfactorily demonstrated the impact of the development on the foreshore water flow and erosion of the sandbank. - No evidence that Department of Primary Industries – Lands and Water or the EPA were consulted prior to the lodgement of the DA, regarding the change of use from the slipway, owner’s consent of leased land and required approvals/licenses. 	<ul style="list-style-type: none"> - The application was referred to Council’s Environmental Planner for assessment and additional information was requested in relation to the following issues: <ul style="list-style-type: none"> o Insufficient assessment of impacts to seagrass and threatened shorebirds o Finished floor level of the swimming pool and spa being below the mean high water mark o Insufficient details of construction methodology - Upon submission of the additional information, it was considered that the proposal would not result in significant impacts to the biophysical and ecological environment, or any natural coastal processes subject to the recommended conditions of consent. - The Department of Primary Industries – Lands and Water were consulted in relation to obtaining owners consent, which was granted with no objections to the development. Correspondence with DPI Water, concluded that a controlled activity permit was not required in this instance, due to the proposal being located on land exempt from such requirements. Further discussion is given in the external referral section elsewhere in this report.
<p><u>Design and development plans</u></p> <ul style="list-style-type: none"> - The proposed pool is below the mean high-water mark and will impact upon tidal processes causing erosion and degradation to sea grass. - Unknown development consent for the installation of three new mooring poles on the development site. - Drawing No 006 of the Architectural Plans highlighted that one winch housing on the slipway site will be retained, why is this being retained for the proposal. 	<ul style="list-style-type: none"> - A revised Architectural Plan prepared by CKDS Architecture has addressed the pool and spa being below the high-water mark. The pools height has been raised to RL 1.26m AHD which exceeds the RL 1.21m AHD high water mark. This revision will ensure potential impacts are further mitigated in relation to tidal movements, water quality, sandbank erosion and degradation to seagrass. - It is apparent that the installation of the mooring poles referred to was undertaken prior to this development application being submitted to Council. Therefore, is not a relevant matter for consideration with this application. - The winch housing structure will be retained in order to store, cover and secure existing LPG gas bottles and other associated maintenance equipment.

<p><u>View loss and visual impacts</u></p> <ul style="list-style-type: none"> - The existing marina is already a prominent visual structure, the proposed development will be an additional 0.8m above the existing structure and will cause further and significant obstruction of water/foreshore views, impacting residential homes and potentially decreasing property value. 	<ul style="list-style-type: none"> - The LEP has stipulated an 8m maximum height of building on the subject site. The proposed development is consistent with this standard, being a maximum of 8m in height. - The issue of impact to property prices is not a relevant planning consideration in the assessment of a development application
<p><u>Noise and odour</u></p> <ul style="list-style-type: none"> - The current waste management facility is poorly designed and produces offensive odours. The facility is not locked and open to the public. There has been no indication how this will be managed with the proposed additions to the clubhouse. - Local residents are already subject to noise impacts during waste removal from the bin collection service lining Ridgeway Avenue. 	<ul style="list-style-type: none"> - The waste management facility is not part of the DA and is considered a separate issue. Any incidence of waste impacts (odour, vermin etc.) on neighbouring properties is a separate matter for investigation and action by the relevant authorities. - A Waste Management Plan accompanied the DA which provided an outline on the operational waste generation of the development and examined the existing and proposed waste management facilities. The Plan found that the existing and proposed facility would be adequate for the nature, scale and intensity of the development. - Waste removal services are undertaken by contractors and the noise generated by the vehicles servicing all putrescible and recycling waste receptacles in the surrounding area is not a relevant matter for the consideration of this development. Complaints about noise from the waste contractors should be directed to the relevant authorities for investigation and action.

Coastal management and stormwater

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| <ul style="list-style-type: none"> - The proposed development will increase the impact of sandbank erosion and tidal flow of the foreshore area in addition to the current impacts from previous developments. - The proposed piles will cause a swirl affect interfering with ebb and flow of tides within the immediate area. - The proposal has not adequately addressed the water quality impacts from increased debris entering the waterway as a result of additional human presence in the areas of the proposed deck, spa and swimming pool. - The proposal has not addressed how impacts of excess stormwater from the building and rainwater gardens will be managed as to not impact on a surrounding estuary. - No pile driving should take place at times where there is an incoming tide. | <ul style="list-style-type: none"> - As stated within this report, the proposed piles will not have a detrimental impact on natural water flow, nor will they alter water flow in the localized area. The provided concept Construction Methodology prepared by Northrop demonstrated that piles will be a satisfactory distance from each other to not block or alter natural tidal flows. - A revised Erosion and Stormwater Management Plan has been prepared by Northrop Engineering. The revised stormwater plan has proposed a filtration system to treat the majority of the hardstand area of the proposed and existing development (inclusive of the northern hardstand area and southern roof areas). This new and enhanced system will ensure water quality outcomes that improve on current levels, and meeting Councils DCP targets. The likely occurrences of water overflow from the pool and spa will be mitigated by putting in place mechanisms to capture and direct all water discharge directly into the existing sewer infrastructure. Management of debris entering the waterways as a result from human presence will be managed during the operation phase of the development through waste management procedures and practices by the proponent. - The revised Erosion and Stormwater Management Plan has included the provision of a filtration system which filters overflow from the existing water tanks, roofs and hardstand areas. The filtration system achieves Council's DCP water quality provisions and is consistent in this regard. |
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Ecological impacts

- The proposal has the potential to cause environmental damage to the Karuah River which is a sensitive marine park environment.
- The proposed pool drainage was not addressed in the plans chemicals from the pool water can have a detrimental impact on the marine environment, particularly to seagrass and surrounding estuaries.
- It is an offence under the Fisheries Management Act to cause harm to sea grasses Class 1 Fish Habitat within the Myall Lakes estuary, which the proposal may likely impact upon.
- The Aquatic Assessment has failed to acknowledge various fauna species observed within the area such as green turtles (protected under the EPBC Act 2000) and bottlenosed dolphins. Consequently, these species may be impacted by human activities from the marina such as waste in the waterway, stormwater, and chemicals from the swimming pool and spa.
- Use of a barge to complete pile driving methods will prevent light from reaching seagrasses and has the potential to deposit sediment on the seagrass beds.
- Green turtles and bottlenosed dolphins have regularly been recorded in the area and are susceptible to impacts from construction activities, plastics and other debris.

- The application was referred to DPI Marine Parks for concurrence. The response from DPI raised no objection to the development subject to conditions.
- A revised Architectural Plan prepared by CKDS Architecture has addressed the pool and spa being below the high-water mark. The pools height has been raised to RL 1.26m AHD which exceeds the RL 1.21m AHD high water mark. This revision will ensure potential impacts are further mitigated in relation to tidal movements, water quality, sandbank erosion and degradation to seagrass. The proposal incorporates adequate drainage to avoid pollution of pool chemicals into the water.
- The DA was referred to DPI Fisheries under Section 205 and Section 219 Fisheries Management Act 1994 (FM Act). The response from DPI concluded that no impacts were to occur to marking vegetation and more broadly that no permit would be required under the FM Act.
- Further information was requested from the applicant to supplement the original aquatic assessment including an assessment of impacts to seagrass and threatened shorebirds. Upon submission of the additional information, it was considered that the proposal would not result in significant impacts to the biophysical and ecological environment, or any natural coastal processes subject to the recommended conditions of consent.
- The use of the barge will be managed in line with the Construction Environmental Management Plan, and would not remain in a single location for a duration that would impact seagrass.

Bushfire impacts

- The proposal has not addressed bushfire impact and accessibility requirements for fire fighting vehicles/equipment.

- The development site is not identified to be within, adjoining or surrounding bushfire prone land, therefore it is not required to consider bushfire impacts, undertake a detailed Bushfire Assessment or prepare a Bushfire Assessment Report.

<p><u>Aboriginal heritage</u></p> <ul style="list-style-type: none"> - The proposal has identified that works are proposed within the neighbouring east RE1 zoned public owned land, but the proposal has failed to recognise that the site is within a declared Aboriginal place. - The proposal does not assess the impacts to an Aboriginal place in accordance with OEH 2011 Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW. - Leonard Everett Park (LOT: 322 DP: 636840) was designated as an Aboriginal Place. As the proposed development intrudes into this Lot, the applicant should seek agreement from Worimi Local Aboriginal Land Council. 	<ul style="list-style-type: none"> - The proposed development activity will be predominantly undertaken within the development site of 2C Ridgeway Avenue (Lot 539 in DP 823769) which is not identified to be within the classified Aboriginal Place (as per the AHIMS assessment undertaken by CPSD on 9 October 2018). Furthermore, no excavation will occur on land identified as an Aboriginal Place, therefore it is not required to undertake an assessment pursuant to the <i>OEH 2011 Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW</i>. - Written notification of the development was issued to Worimi Local Aboriginal Land Council and no response received.
<p><u>Construction impacts</u></p> <ul style="list-style-type: none"> - The proposal gives no indication to how long construction works will take, or how long residents in the vicinity are likely to be significantly affected by reason of noise, vibration, odour, fumes, dust, traffic or waste disposal throughout the duration of the works and thereafter. - The proposal gives no provisions to how heavy machinery will be transported and positioned on the constrained site and how it will not impact upon a sensitive marine environment. - The proposed demolition shall be carried out in accordance with the requirements of AS2601 – Demolition of Structures. - A demolition plan should be submitted to outline reuse of excavated material on-site, location of on-site waste facilities, destination and transportation routes of all materials to be disposed of off-site, dust and noise control measures, asbestos report and protection of the marine environment. 	<ul style="list-style-type: none"> - All impacts from construction including access arrangements for construction equipment will be addressed in detail during the Construction Certificate stage of the development. A condition has been recommended requiring the preparation of a Construction Environmental Management Plan to be submitted for approval by Council's Natural Resources section prior to the issue of a Construction Certificate.

<p><u>Social and economic impacts</u></p> <ul style="list-style-type: none"> - The proposal will provide no new jobs utilising existing staff employed by the proponent. Therefore, there is little to no economic benefit to the local community from the development. - The proposal encroaches upon public land without any public benefit, purely facilitating the use of members only for private benefit. 	<ul style="list-style-type: none"> - The development would assist in providing short-term employment during the construction phase and long-term job security for existing staff associated with the servicing of the development once constructed. - Although no additional jobs will be created, the proposal will assist in providing job security to existing staff members through improved services at the Club to existing members. The Club facilities will be improved to better cater for visitors within the local community. - The proposal will only encroach on a small portion of publicly owned land (Lot 321 in DP 636840, Lot 322 in DP 636840 and Lot 2071 DP 852662 (part) and is designed in such a manner to provide complete and unimpeded access to the community and Council. This will equate to improved access to land for the public when compared to the restrictive nature of the existing slipway.
<p><u>JRPP Determination – 2015</u></p> <ul style="list-style-type: none"> - The proposal has not addressed previous matters raised in the expansion of the Marina (DA16-2015-586-1) refused by the JRPP in 2015. These matters included impacts on aboriginal cultural heritage, fauna and flora, coastal/tidal hydrological environments, aquaculture, traffic and car parking and inconsistency with planning controls and insufficient information. 	<ul style="list-style-type: none"> - The proposal is considered under a new DA and is therefore assessed separately on its own merit. - The previous DA under 16-2015-586-1 was for a Marina – Extension to existing marina (additional 59 berths) and car parking. This previous DA was primarily for expansion of berths which were assessed as potentially having a significant impact on the surrounding environment and would have required significant additional car parking. - The proposed current development is significantly reduced in scale and of a different nature. There is no proposal to expand the existing marina facilities encompassing additional berths.

s4.15(1)(e) – The public interest

The proposal is considered to be an appropriate addition to the existing club building and the overall existing marina development generally, providing ancillary and improved services to existing customers. It will assist in providing short-term employment during the construction phase and long-term job security for existing staff associated with the servicing of the development once constructed.

The proposal's likely environmental impacts have been found to be acceptable or can be adequately managed to ensure adverse effects are appropriately mitigated.

There are not likely to be any impacts arising from the proposal which will detrimentally affect the public interest. Accordingly, the proposed development supports and promotes the public interest.