

ATTACHMENTS UNDER SEPARATE
COVER

ORDINARY COUNCIL MEETING
8 FEBRUARY 2022



PORT STEPHENS
C O U N C I L

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DEVELOPMENT ASSESSMENT REPORT

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	Perception Planning
Date of Lodgement	09/01/2019
Value of Works	\$1,900,526.00
Property Address	2A Sunset Boulevard SOLDIERS POINT, 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
Lot and DP	LOT: 2071 DP: 852662, LOT: 321 DP: 636840, LOT: 539 DP: 823769, LOT: 1 DP: 1058490, LOT: 2 DP: 1058490, LOT: 322 DP: 636840
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 located in the area lying directly to the north of the club, which is currently used as a slipway. Key features of the proposed development include:

- Site preparation works including partial demolition of the existing slipway, minor earthworks and the driving of pile foundations;
- Construction of a two-storey addition to the marina that will measure 994.0m² in gross floor area. The key features of the marina extension include;

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- 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.

The lounge, decking and pool area and gym are self-service facilities proposed by the applicant to only be used by customers who have boats moored at the marina.

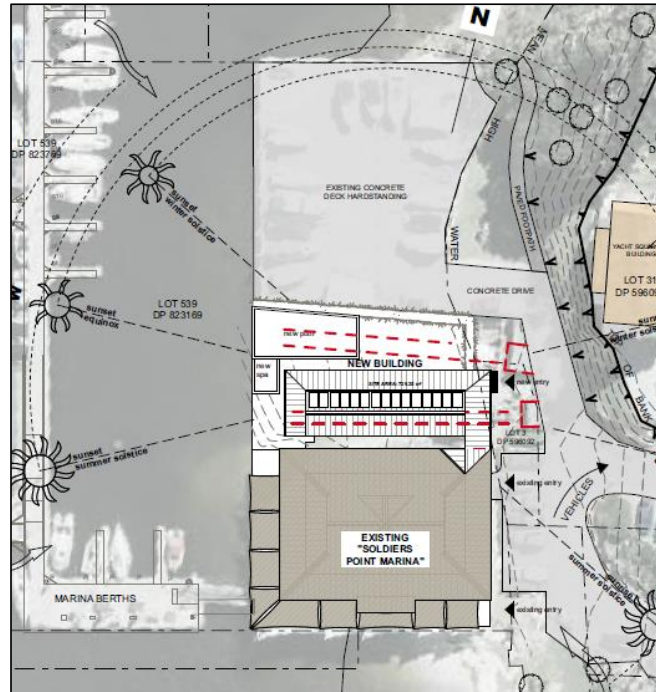


Figure 1: Location of proposed development in proximity to existing building



Figure 2: Perspectives of proposed development

Site Description

Soldiers Point Marina is located at the north-western end of the Soldiers Point 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, 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).
- 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 4**)



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Figure 3: Satellite Image Overview of Subject Site

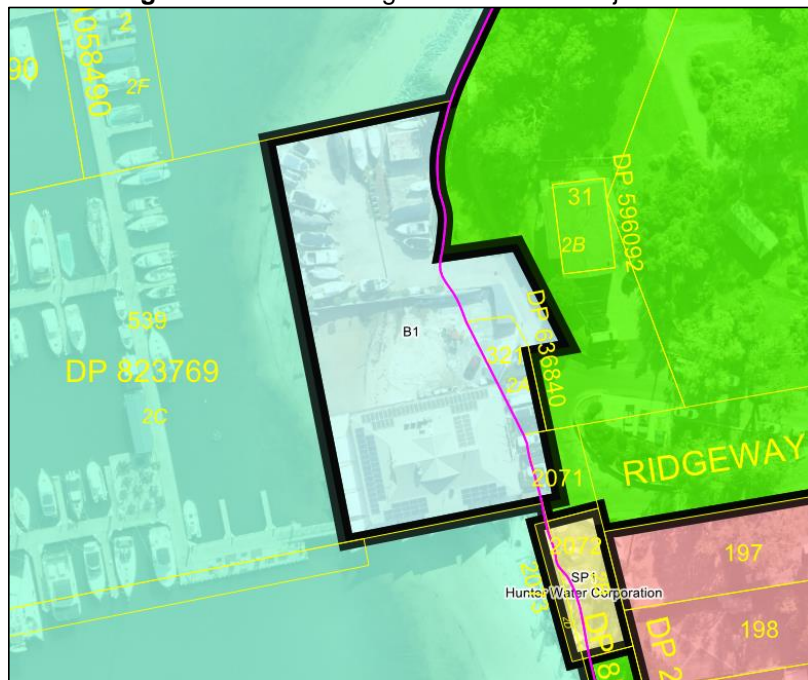


Figure 4: Zoning and Satellite Image of Subject Site

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 primary 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. Car parking is prohibited in the R2 zone, where the car park is located, 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. Another seven car parks were 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 exists due to the construction of the 90 berth marina.

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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 Joint Regional Planning Panel (now Hunter and Central Coast Regional Planning Panel) on 12 June 2014 due to outstanding issues relating to Aboriginal Cultural Heritage, ecological impacts, car parking, visual amenity and site suitability.

A further 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)

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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

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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.

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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.

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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.

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Building Surveyor

The application was referred to Council's Building Surveyor for assessment. No objections were made subject to conditions relating to; compliance with the Building Code of Australia, Disability (Access) Standards, general construction requirements and swimming pool requirements.

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* (EP&A Regulations), fixed levies apply.

Natural Systems

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 Highest Astronomical Tide (HAT); and
- Insufficient details of construction methodology.

Additional information was submitted by the applicant in response to the above concerns. The proposed floor level of the swimming pool and spa was adjusted to be above the HAT mark and deemed satisfactory. However, information submitted in relation to management of impacts to seagrasses and migratory shorebirds was deemed insufficient.

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).

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.

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 approval 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.

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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.

Heritage NSW

The DA was referred to the Office of Environment and Heritage (OEH), now known as Heritage NSW (HNSW), upon lodgement of the application in January 2019. The referral was sent as the proposed development abuts the boundary of the Soldiers Point Aboriginal Place and is located in proximity to known Aboriginal sites listed on the Aboriginal Heritage Information Management System (AHIMS). A response was received from Heritage NSW on 4 June 2019 which noted that Heritage NSW did not have a regulatory role in the assessment of the DA and no comment was made with regard to the application.

After receiving the HNSW response, it was identified that the referrals sent to external agencies did not identify all property parcels affected by the application. For this reason, a second referral was sent to HNSW on 28 September 2019. In response, HNSW confirmed the proposal abuts the boundary of the Aboriginal Place. Due to the development comprising ground disturbing works along the shared boundary, including demolition, a recommendation was made that the applicant assess potential impacts on Aboriginal objects and cultural heritage through an Archaeological Assessment and Aboriginal Cultural Heritage Assessment Report (ACHAR). This request for information was issued to the applicant in November 2019.

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In October 2020, an Archaeological Assessment and ACHAR was submitted by the applicant. The reports found that an Aboriginal Heritage Impact Permit is required under Section 90 of the *National Parks and Wildlife Act 1974*, due to potential impacts to the Soldiers Point Aboriginal Place and previously recorded Aboriginal archaeological sites. Accordingly, the application was referred to HNSW as integrated development and General Terms of Approval (GTAs) requested. In February 2021, HNSW made a second request for additional information due to inadequacies in the ACHAR. The information requested related to the undertaking of test excavations to determine the nature and extent of any subsurface deposits of Aboriginal objects. The request also identified the need for clarification regarding the location of nearby AHIMS sites, clear identification of the works within the Aboriginal Place and clarification regarding the extent of works proposed.

In September 2021, a revised Archaeological Assessment and ACHAR was submitted by the applicant and referred to HNSW. However, the revised ACHAR submitted by the applicant failed to include the previously requested test excavations by HNSW. In response, HNSW issued a third request for information requiring the undertaking of the test excavations that had already been requested in October 2020. HNSW also noted that the applicant had not yet applied for the required AHIP needed for test excavations to occur.

The outstanding information requested by HNSW, including test excavations has not been submitted and accordingly GTAs have not been issued.

HNSW have noted that if the test excavations reveal Aboriginal objects are identified within the proposed works footprint, and harm to those objects cannot be avoided, then GTA's would not be issued without further assessment being undertaken by the applicant. For this reason, potential impacts to Aboriginal heritage remain unknown with inadequate information provided to date, despite the submission of a number of revised ACHAR.

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 elsewhere in this report.

Section 4.65 – 4.70 (Division 4.11 Existing uses)

Division 4.11 Section 4.66 EP&A Act allows for the continuance of existing use and Section 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 (see Part 5 of the EP&A Regulations elsewhere in this report). The relevant provisions of the *EP&A Act* 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, where 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,*

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(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 - Continuance of and limitations on existing use

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".

Section 4.67 - Regulations respecting existing use

Section 4.67 provides that alterations and additions may be made to an existing use, as is proposed in this application.

The 'existing use' provisions contained in Part 5 of the EP&A Regulation are addressed in further detail elsewhere in this report. 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.

S4.46 – Integrated Development

Section 4.46 EP&A Act provides that development is integrated development if in order to be carried out, the development requires development consent and one or more other approvals. The proposed development is integrated as it requires approval under the following Acts:

Section 90 of the National Parks and Wildlife Act 1974

Section 90 of the *National Parks and Wildlife Act 1974* relates to the granting of an Aboriginal heritage impact permit. As outlined in the preceding section of this report, the application has been referred to HNSW, seeking General Terms of Approval on two occasions. On both occasions, GTAs have not been granted and additional information has been requested.

Consideration has also been given to the *Protection of the Environment Operations Act 1997* (POEO Act) as under certain circumstances, developments for a marina require an Environmental Protection Licence (EPL) under the POEO Act. The existing marina holds an EPL however, the proposed extension of the marina does not require an EPL as the development does not entail any expansion to the existing boat moorings and storage or boat construction and maintenance facilities.

4.47 - Development that is integrated development

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Section 4.47(2) provides that before granting development consent to an application for consent to carry out the development, the consent authority must, in accordance with the regulations, obtain from each relevant approval body the GTAs proposed to be granted by the approval body in relation to the development.

The application requires approval under Section 90 of the *National Parks and Wildlife Act 1974*. The application has been referred to HNSW, seeking GTAs on two occasions. On both occasions, GTAs have not been granted and additional information has been requested. The additional information remains outstanding and as a result, potential impacts to Aboriginal heritage are unknown due to inadequate assessment.

Due to the GTAs not having been issued, the prerequisites for the granting of development consent under Section 4.47(2) have not been met at this time and consent cannot be granted in accordance with this section.

The applicant has been afforded multiple opportunities to secure GTAs from HNSW through the development application over the past two years. However, there has been an inability for GTAs to be provided due to inadequate assessments in the ACHAR and a failure to address the requirements of HNSW identified originally in November 2019.

**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.

The development site has been historically used as a slipway for boating purposes, a use that has potential to lead to contamination therefore, the application included the submission of a Preliminary Environmental Screening report which included assessment of potential soil contamination and ASS risk. The report concludes that there is a relatively low potential for contamination-related unexpected finds to occur at the site during the proposed development works. Accordingly, it is considered that the land is not contaminated and the proposal is consistent with the requirements of SEPP No.55, subject to conditions relating to a Hazardous Building Material Assessment and unexpected finds procedures be implemented 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 systems 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)

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The subject land is located with 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, Aboriginal cultural heritage and existing public open space and access to and along the foreshore.

The application includes the submission of an aquatic assessment, seagrass impact assessment, threatened shorebirds assessment of significance, archaeological assessment and ACHAR. The proposal was reviewed by Council's natural systems 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.

However, insufficient information has been provided to assess the extent of impacts to Aboriginal heritage, noting that the application has been referred to HNSW, seeking GTAs on two occasions and on both occasions GTAS have not been granted and additional information requested. Potential adverse impacts may occur to Aboriginal heritage if the development was to proceed without the submission on additional information and on this basis, the provisions of Clause 13(2) cannot be satisfied at this time.

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, being lesser in height and scale than the existing building is also compatible with the natural setting and will not adversely impact views.

However, insufficient information has been provided to assess the extent of impacts to Aboriginal heritage. As a result, potential adverse impacts may occur to Aboriginal heritage if the development was to proceed without the submission on additional information and on this basis, the provisions of Clause 13(2) cannot be satisfied at this time.

As per clause 15 of the policy, development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. The proposed development is to be suspended on piles above the sea floor, allowing for natural flow of sediment underneath, thereby mitigating potential erosion impacts. The proposal is not anticipated to cause any increased risk of coastal hazards on or around the site.

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Local Environmental PlanPort 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, where 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 comprises alterations and additions to the existing Marina land use, comprising 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.

The proposed gym is an ancillary component of the marina that will be utilised by boat owners who utilise the moorings at the marina. As such, the gym could not operate independently of the Marina and is therefore appropriately characterised as ancillary development.

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 causing adverse impact to the natural environment.

Clause 2.7 – Demolition

The application includes the proposed demolition of an existing slipway and winch housing structure. As a result, consent for the development is required under this clause.

Clause 4.3 – Height of Buildings

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 is compliant with the requirements of this Clause.

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, owner's consent from Council was received, and the application is being reported to the ordinary Council for determination.

Clause 5.7 - Development below mean high water mark

Clause 5.7 provides that development consent is required to carry out development on any land below the mean high water mark of any body of water subject to tidal influence. The proposed alterations and additions extend over the water of the Port Stephens estuary and includes the installation of the pile foundations below the mean high water mark. As a result, consent for the development is required under this clause.

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Clause 5.10 – Heritage conservation

The objectives of clause 5.10 include the conservation of Aboriginal objects and Aboriginal places of heritage significance. Consent is required for works that will result in impacts to items of heritage significance. Where a site is identified as an Aboriginal place of heritage significance, the consent authority is required to consider the impact 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 application in writing or by another manner as may be appropriate and consider any response received.

The Statement of Environmental Effect (SEE), project no. 2018/18-052, prepared by City Plan and dated 20/12/2018, originally lodged with the application identified that the site adjoins land to the north-east which is identified as an Aboriginal Place and that there were two known AHIMS sites in proximity to the site area. The SEE concluded that the proposal is not likely to impact upon the identified Aboriginal heritage as it is not within the identified area, is located some distance from the development site and will not involve any significant excavations.

On 28 September 2019, a referral response received from Heritage NSW identified that due to the proposal comprising ground disturbing works along the shared boundary of the Aboriginal Place, the applicant should assess potential impacts on Aboriginal objects and cultural heritage through an Archaeological Assessment and ACHAR.

The Archaeological assessment and ACHAR was submitted to Council in October 2020. The reports found that an Aboriginal Heritage Impact Permit is required under Section 90 of the *National Parks and Wildlife Act 1974*, due to potential impacts to the Soldiers Point Aboriginal Place and previously recorded Aboriginal archaeological sites.

The application was referred to Heritage NSW as integrated development on two occasions. On both occasions, GTAs have not been granted and additional information has been requested. Both requests highlighted the need to undertake test excavations to determine the nature and extent of any subsurface deposits of Aboriginal objects.

The test excavations have not been undertaken at this time and therefore the extent of impacts that would occur to Aboriginal heritage cannot be adequately assessed and potential impacts are unknown. On this basis, the proposal does not satisfy the requirements of this clause.

No local or state listed heritage items are located on the subject site.

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 conditions relating to the preparation of an Acid Sulfate Soils Management Plan.

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 objectives 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 European 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 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.

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 AHD. The ground floor level of the proposed development, including the proposed lounge/kitchen includes a Finished Floor Level of 2.99m AHD which is 0.3m below the FPL however, this is above the 2100 1% Flood Level of 2.8m AHD. Noting that the existing FFL of the marina is 2.040, the proposal is considered to be compatible with the flood hazard of the land subject to recommended conditions relating to a flood risk management plan which 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.

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.

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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 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 Systems 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 conditions relating to the preparation of a Construction Environmental Management Plan and the protection of existing vegetation and trees during construction.

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*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 disturbance to Acid Sulfate Soils.

B3.B Air Quality

The proposed development is not likely to 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 DCP. If supported, standard conditions of consent could be imposed during the construction phase would address dust management.

B3.D Earthworks

Refer to clause 7.2 discussion elsewhere in this report. Subject to the implementation of sediment and erosion controls and the implementation of 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.

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 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 B7 - 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 and a several previously recorded AHIMS sites.

Section B7.5 provides that where harm to an Aboriginal object or place cannot be avoided, the applicant must prepare an ACHAR to assess the impact of the proposed development on Aboriginal cultural heritage, consistent with the Office of Environment and Heritage 'Guide to investigating, assessing and reporting on Aboriginal Cultural heritage in NSW'.

The Archaeological assessment and ACHAR was originally submitted to Council in October 2020. The reports were referred to Heritage NSW as integrated development on two occasions. On both occasions, GTAs were not been granted and additional information requested. Both requests highlighted the need to undertake test excavations to determine the nature and extent of any subsurface deposits of Aboriginal objects.

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Despite the HNSW requests, the test excavations have not been undertaken at this time and therefore the extent of impacts that would occur to Aboriginal heritage cannot be adequately assessed. On this basis, the proposal does not satisfy the requirements of part B7.

Part B8 – Road network and parking

On-site parking provisions:

The application does not propose the provision of any additional car parking or alterations to existing car parking. 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 at the time of lodgement, did not require additional parking under the DCP threshold. However, since lodgement of the application in January 2019, the parking provisions for marinas within the DCP have been amended to now encompass uses carried out as part of, or ancillary to a marina. There are no savings provisions in the DCP, therefore the current controls are applicable in this regard.

Section B8.6 of the DCP provides that a reduction in car parking demand can be considered where a Traffic Impact Assessment (TIA) is submitted and it can be demonstrated that ancillary uses carried out as part of, or ancillary to a marina do not generate demand for on-site parking. The proposed facilities, including lounge, decking and pool area and gym are self-service facilities proposed by the applicant to only be used by customers who have their boats moored at the marina, operating in a similar manner to a hotel/motel. Further, the proposed changes are not expected to generate additional employment, as the lounge and gym facilities are unstaffed, with the exception of ongoing maintenance which is to be incorporated within existing maintenance routines. The application included a TIA, prepared by SECA Solution and dated 23 October 2018, which assessed the car parking demand on this basis. The TIA concludes as the development is for upgraded facilities associated with the users of the current moorings, it is not a generator of traffic or parking. In addition, the application proposes the removal of the existing slipway, which could also see a reduction in car parking demand.

Some short-term impacts to car parking would occur during construction. Construction will primarily occur during the week when the marina is not at its busiest and demand for parking is at its lowest. During this time the parking demands of construction workers can be accommodated within the existing parking both on-site and on-street within the immediate vicinity of the site without unduly impacting upon local residential streets, noting the short term nature of the impact.

For the reasons outlined above, the application adequately demonstrates that the proposal would not adversely affect the availability of off-street car parking and therefore not exceed the existing shortfall of spaces. In the event the application was supported, a condition of consent could be included to limit the use of the facility to boat users moored at the marina, aligning with the applicant's intended use of the facility. Any change of use of the facility for purposes other than this, such as a restaurant, café/bar or the like, would be subject to separate approval from Council and would require the provision of additional car parking. Subject to the imposition of the aforementioned condition if supported by Council, the proposal would satisfy the requirements of Section B8.6 of the PS DCP.

Traffic Impacts:

The TIA submitted with the application assessed traffic related impacts associated with the proposal.

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The TIA identifies that the existing level of traffic flows on Soldiers Point Road and Ridgeway Avenue are low. 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 in the long-term. In addition, the proposal includes the removal of the existing slipway which could also see a reduction in traffic.

Some temporary traffic impacts would result during construction of the development, which the TIA concludes can be catered for under the existing capacity of the collector roads within the area. Moreover, construction would primarily occur during the week, when the marina is less busy.

The application was reviewed by Council's traffic and development engineer and no objection was raised with regard to traffic related impacts. Overall, the proposal is considered consistent with the requirements of Chapter B8.A – Traffic Impacts of the DCP.

Section C2 – Commercial

The proposed development is for alterations and additions to an existing marina. The marina definition does not specifically fall within the commercial chapter of Council's DCP.

Notwithstanding, a merits assessment has been made against the relevant provisions of this chapter being the most applicable section of the DCP.

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 context of the site and surrounds. The front setback area features landscaping which provides continuity between the building and the street.

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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	Building mass does not result in unreasonable loss of amenity to adjacent properties or public domain. Building proportion is complimentary to the form, proportions and massing of existing building patterns.	The proposed development, has been designed appropriately for the coastal location. 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.
C2.17 – C2.21	Building facades use materials, colours and architectural elements to reduce bulk and scale that are complimentary to existing built-form and natural setting Development provides continuity of an active street frontage for localities where business premises predominantly face the street. An active street frontage provides the following: <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 Development incorporates CPTED principles by providing passive surveillance to public spaces through building design and orientation Development provides pacing to the public footpath for the entire length of the development street frontage	The proposed building façade incorporates 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. 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. 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.
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

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		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	Landscaping is provided as follows: <ul style="list-style-type: none"> 10% of the site area consisting of deep soil planting 30% shading over car park areas Landscaping is in accordance with the following: <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 Structural soil and/or structural cells should be used to reduce competition between specimen trees and infrastructure	The existing marina has very little landscaping areas. The proposed extension incorporates additional landscaping which will improve the visual amenity of the site and streetscape. The landscaping will also improve visual screening of the adjacent boat storage area.

s4.15(1)(a)(iia) – 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**Part 5 – Existing uses**

Section 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 clauses of the EP&A Regulations are outlined 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.

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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 may be expanded within the definition of a “marina” use.

Schedule 3 - Designated Development

Schedule 3 of the EP&A Regulations includes certain categories of marinas as being designated development. Clause 35 provides that 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. Clause 36 provides factors to be taken into consideration by the consent authority in forming its opinion as to whether or not development is designated development.

The proposed alterations and additions include extensions and additions to a marina building over an existing slipway located immediately to the north of the existing club. The proposed extension includes a two storey building with a comparably smaller floor area and height compared to the existing building. It is noted that there is a historic shortfall of 17 car parking spaces, however, as discussed within Section B8 of this report, the application is not considered to generate additional car parking demand and the current parking arrangement is suitable.

The proposal includes work over waterfront land and below the mean high-water mark within the Port Stephens – Great Lakes Marine Park. Due to the site’s location, 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 Systems Section, finding there to be no significant impacts anticipated to the biophysical and ecological environment, or any natural coastal processes. The seagrass impact assessment and threatened shorebirds assessment confirms that no adverse impacts are to occur to marine or terrestrial vegetation and fauna. In addition, the application adequately demonstrates that any impacts resulting from the proposal can be adequately managed during construction and ongoing operation of the development. Furthermore, external agency referrals from DPI Fisheries and Marine Parks did not raise any objection to the proposed development.

Taking into consideration the above, in conjunction with the factors listed under Clause 36, the proposed development, would not significantly increase the impacts of the total development compared with the existing or approved development. Therefore, the application is not considered designated development.

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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 unacceptable 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 and notified for a period of 14 days between 14 February 2019 and 28 February 2019. The application was again re-advertised and notified for a period of 14 days between 6 September 2019 and 20 September 2019. A final round of notification and advertising occurred for 14 days between 4 December 2020 and 18 December 2020.

During the combined advertising and notification period, 162 submissions inclusive of 77 standard submissions and 85 pro forma submissions with a total of 99 individual signatories received in relation to the proposed development.

Of the submissions received, one submission was made in support of the development, all other submissions objected to the proposal.

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It is acknowledged that some of the submissions relating to Aboriginal heritage have not been overcome, due to insufficient information being provided to allow suitable assessment of impacts. As a result, the application is recommended for refusal.

The concerns raised regarding the development during this period are summarised in the table below.

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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 Regulations. - A recommendation was made to approve the development which was later withdrawn. The consequence is that the public had not been able to comment on the proposed foreshore works and denied public participation. 	<ul style="list-style-type: none"> - The public notification and advertising process was undertaken by Council in accordance with the adopted policies. It is acknowledged that initial notification and advertising of the development did not include all relevant addressing and lot details. To address this, a further notification/advertising period was made, ensuring all relevant requirements of the EP&A Act and AP&A Regulations have been met. - 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. - Information relating to the development was made available online using Council's DA Tracker and via appointment at Council's administration building, in accordance with requirements of the EP&A Regulations. - The recommendation to Council to approve the DA was withdrawn due to inaccuracies in the identification of property parcels affected by the proposal. As a result, a further round of notification/advertising was undertaken to clarify the property parcels affected by the proposal.
<p><u>Previous DA and non-compliance history of the site</u></p> <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. - Existing development within Lot 322 	<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 referenced in the submission 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.

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<p>and 321 in DP 636840 must be removed in order to comply with the Local Government Act 1993 and Port Stephens Local Environment Plan (LEP) 2013.</p>	<ul style="list-style-type: none"> - 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 conditions of consent, the application would not cause adverse impact to the aquatic environment or coastal land. - Removal of existing structures within Lot 322 and 321 in DP 636840 is not relevant to the assessment of the current DA.
<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). - Owners consent was granted retrospectively after the DA was lodged. 	<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

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	<p>has also been provided to clarify the property details of the proposed development.</p> <ul style="list-style-type: none"> - The application was re-notified and advertised to the public noting all affected property parcels. - The Environmental Planning and Assessment Regulation 2000 does not require owners consent to be provided at lodgement of the application. Owners consent is required prior to the determination of a development application.
<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 predominately 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.
<p><u>Integrated development approvals</u></p> <ul style="list-style-type: none"> - The proponent did not obtain the necessary approvals and licenses applicable for the site prescribed under Integrated Development provisions, these approvals/licenses included: <ul style="list-style-type: none"> 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: <ol style="list-style-type: none"> 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 	<ul style="list-style-type: none"> - 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. - At the time of this submission it had not been identified that an approval under the <i>National Parks and Wildlife Act 1974</i> was required for the proposal. It was later confirmed that approval is required and accordingly, referral sent to HNSW for GTAs. HNSW have reviewed the proposal for the issuing of GTAs on two occasions. On both occasions, HNSW have requested additional information. The additional information remains outstanding, and as a result the application is recommended for refusal. - Owners consent (from Crown Land) has been provided by Crown Land for all components of the development that are located on Crown Land. - Approval is not required under the <i>Coastal Management Act 2016</i> as part of this application. The <i>State Environmental Planning Policy (Coastal Management) 2018</i> identifies and maps the coastal zone according to definitions in the Coastal Management Act 2016 and is considered elsewhere in this report.

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parts of the building, work or land are used for those purposes.	<ul style="list-style-type: none"> - The proposal benefits from 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.
<u>Designated development</u> <ul style="list-style-type: none"> - 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. 	<ul style="list-style-type: none"> - 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 <i>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.</i> - 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. - Notwithstanding the above, clause 35 provides that 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. The proposed development comprises alterations and additions to a marina, therefore this clause is relevant to the application. Taking into consideration the factors to be considered under Clause 36 and the impact assessment detailed throughout this report, the proposed development, would not significantly increase the impacts of the total development compared with the existing or approved development. Therefore, the application is not designated development.
<u>Contamination, geotechnical and acid sulfate soils (ASS)</u> <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 	<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

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<p>from the site.</p> <ul style="list-style-type: none"> - 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 hydrological impacts such 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. 	<p>of this DA. The current proposal does not seek to change, alter or undertake any work on the existing marina berths 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.</p> <ul style="list-style-type: none"> - 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 which could be included as conditions of consent if the application is supported by Council. - 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).
<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 	<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.

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the swimming pool?	
<p><u>Car parking and traffic generation</u></p> <ul style="list-style-type: none"> - 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 marina is 71 parking spaces short of the requirements under the DCP. - Even if the new facilities are confined to marina patrons, overall visitation will increase. - 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. - Additional traffic generated by the proposal will place pressure on the parking supply in the area. - The facilities will be used by persons other than boat owners and generate car parking demand. 	<ul style="list-style-type: none"> - The existing development does include a historic deficit in car parking. However, the proposed alterations and additions do not generate additional demand for car parking and therefore would not exceed the current shortfall, consistent with Section B8.6 of the DCP. - The proposed facilities, including lounge, decking and pool area and gym are self-service facilities proposed by the applicant to only be used by customers who have their boats moored at the marina, operating in a similar manner to a hotel/motel. Further, the proposed changes are not expected to generate additional employment, as the lounge and gym facilities are unstaffed, with the exception of ongoing maintenance which is to be incorporated within existing maintenance routines. The application included a Traffic Impact Assessment (TIA), prepared by SECA Solution and dated 23 October 2018, which assessed the proposals car parking demand on this basis. The TIA concludes as the proposal is for upgraded facilities associated with the users of the current moorings, it is not a generator of traffic or parking. In addition, the proposal includes the removal of the existing slipway which would also see a reduction in car parking demand. - Historical issues relating to non-compliance with car parking are not relevant to the proposal as it is not considered to generate additional car parking demand. A condition of consent could be placed on the consent to limit use of the proposed facilities to users of the boat moorings, enabling compliance action to be taken by Council.
<p><u>Compliance with LEP and DCP</u></p> <ul style="list-style-type: none"> - 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 site was partly rezoned RE1 – Public Recreation in 2015, a survey should be undertaken to establish which parts of the lot were rezoned as the development may intrude on these areas. - The proposed swimming pool represents a change of use. 	<ul style="list-style-type: none"> - 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 a 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

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	<p>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.</p> <ul style="list-style-type: none"> - The proposal is located on community/operational land under the <i>Local Government Act 1993</i>. - 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. - 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. - The broader site was partly rezoned RE1 – Public Recreation in 2015 and the extent of the zone boundaries are shown on the gazetted LEP map. The development plans submitted with the application clearly show the siting of the development with respect to lot boundaries, confirming the proposal is located wholly within the B1 – Neighbourhood Centre zone. - Should the application be approved, a standard condition of consent would be recommended requiring the proponent undertake a peg out survey to confirm the siting of the building is in accordance with the approved plans prior to the issue of a Construction Certificate. - The proposed swimming pool is an ancillary use to the marina component of the development and is therefore permissible.
<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 	<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 adverse impacts to the biophysical and ecological environment, or any natural coastal

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<p>the DA, regarding the change of use from the slipway, owner's consent of leased land and required approvals/licenses.</p> <ul style="list-style-type: none"> - No consideration has been given to the possible effects of climate change. - Engineering drawings have not been provided by the proponent. Engineering drawings should be provided, not concept diagrams. - The ACHAR indicates that a wall is to be located on the western boundary to contain the pool/spa which has not been included in the construction methodology. For this reason, a re-referral should be sent to external agencies. 	<p>processes subject to the recommended conditions of consent.</p> <ul style="list-style-type: none"> - 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. - The proposal has been assessed against the Biodiversity Conservation Act 2016, which requires consideration of whether the proposed development or activity is or is part of a key threatening process or is likely to increase the impact of a key threatening process, including anthropogenic climate change. The proposal is not likely to result in the increase of any of the relevant key threatening processes, including climate change. - Concept engineering plans have been submitted with the application. The plans, combined with the construction methodology details provided by the applicant are adequate to assess the impacts of the proposal. Detailed engineering plans would be required as part of the Construction Certificate if supported by Council. - The construction methodology does not specifically include reference to the pool/spa wall, as the documents focus is on the sub floor structure which consists of driven piles. Notwithstanding, the pool and spa walls are indicated on the proposed architectural plans which were referred to all external referral agencies.
<p><u>Insufficient Plan details</u></p> <ul style="list-style-type: none"> - Objection is made to the fact information not provided includes but not limited to the following:- <ul style="list-style-type: none"> • Dimensions of the structure including member sizes • Setting out details including survey control • Dimensional relationship of the proposed development to existing structures • Reduced levels of the proposed structure to AHD. 	<ul style="list-style-type: none"> - Dimensions of the overall structure are provided on the scaled architectural plans. Specific member sizing details would be required to be provided as part of the Construction Certificate if approved by Council. - A standard condition of consent would be included requiring the proponent undertake a peg out survey to confirm the siting of the building is in accordance with the approved plans prior to the issue of a Construction Certificate, in the event the application was approved. - The proposed development is shown in

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<ul style="list-style-type: none"> • Level of highest astronomical tide • Design load of structural slabs to AS 600 Concrete Structure Code • Reduced levels of the underside of the pool compared to reduced levels of the stream bed. 	<p>relation to existing development and structures on the proposed architectural plans.</p> <ul style="list-style-type: none"> - The architectural plans include existing and proposed floor levels to Australian Height Datum. - The high astronomical tide is depicted on the proposed architectural plans. - The design load of structural slabs would need to be provided as part of any Construction Certificate. - The proposed Reduced Level AHD of the proposed pool floor with relation to the Highest Astronomical tide mark is provided on the proposed architectural plans. This information is considered adequate to inform the environmental assessment of the proposal.
<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. - The design of the foundations requires a geotechnical investigation to confirm the impact of the foundations on the environment. - It should be mandatory for a marina to have a slipway, this proposal will remove the slipway. 	<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. - A geotechnical report has been provided and concludes that the proposed pile footings are appropriate for the site. A condition of consent would be included requiring compliance with the geotechnical report recommendations in the event the application was approved. - There is no mandatory requirement for a marina to include a slipway. In particular, the LEP definition does not have any mandatory requirement for a slipway to form part of a marina.
<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 	<ul style="list-style-type: none"> - The proposed structures have a maximum height less than that of the existing marina building. - The LEP has stipulated an 8m maximum

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cause further and significant obstruction of water/foreshore views, impacting residential homes and potentially decreasing property value.	<p>height of building on the subject site. The proposed development is consistent with this standard, being a maximum of 8m in height.</p> <ul style="list-style-type: none"> - 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.
<p><u>Coastal management and stormwater</u></p> <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 	<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 adversely alter water flow in the localized area. The applicant provided a concept Construction Methodology Report prepared by Northrop to demonstrate that piles will be a satisfactory distance from each other to not block or alter natural tidal flows. The decking structure and pool is to be suspended above the sea floor on piles, allowing tidal flow underneath. Potential erosion or sediment build up has been considered by NSW DPI – Fisheries and Marine Parks in accordance with the NSW Department of Primary Industries: Policy and Guidelines for fish habitat conservation and management Update 2013. Comments received from DPI Fisheries detailed that the use of driven

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<p>where there is an incoming tide.</p> <ul style="list-style-type: none"> - NSW DPI strongly recommends the use of The Blue Book - Managing Urban Stormwater: Soils and Construction (Landcom 2004) when planning sediment and erosion controls in or adjacent to aquatic environments. - The development must comply with the Marine Estate Management Act 2014 and Marine Estate Management (Management Rules) Regulation 1999. 	<p>piles does not require a permit under the Fisheries Management Act as no dredging, reclamation, harm to marine vegetation, or blockage of fish passage would occur.</p> <ul style="list-style-type: none"> - 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. - DPI Marine Parks Concurrence was provided and a Marine Park permit application would be required prior to works commencing. The referral response from Marine parks included conditions requiring Environmental safeguards (e.g. silt curtains, sediment fences, booms etc.) are to be installed consistent with "Managing Urban Stormwater: Soils and Construction" (4th Edition Landcom, 2004, aka the Blue Book) to ensure that there is no escape of turbid plumes into the adjacent aquatic environment. These conditions must be complied with during the construction of the development.
<p><u>Ecological impacts</u></p> <ul style="list-style-type: none"> - The proposal has the potential to cause environmental damage to the Karuah River which is a sensitive marine park environment. 	<ul style="list-style-type: none"> - 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

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<ul style="list-style-type: none"> - 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. - Impacts to oyster aquaculture - Installation of additional pylons will increase turbulence and destabilise sediments affecting seagrass - Impacts to koala habitat - Pier driving and truck movements will impact threatened biota. - Ongoing noise, artificial illumination and the increase in human traffic has the potential to have adverse effects. - The threatened shorebirds report inadequately assesses environmental impacts of the development. 	<p>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.</p> <ul style="list-style-type: none"> - 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 conditions relating to the imposition of construction environmental management. - The use of the barge would 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. - The proposal was referred to Council's Natural Systems 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. - The development does not impact any koala habitat as it is located over the water and existing hardstand areas, where koala feed trees and movement are not present. - The proposed pile driving and truck movements present the potential for short-term environmental impacts during construction. These impacts have been assessed as part of the specialist reports submitted with the application and Council Natural Systems Section, and found to be negligible, subject to the implementation
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	<p>of a Construction Environmental Management Plan, which would be recommended as a condition of consent if the application is supported by Council.</p> <ul style="list-style-type: none"> - Noise, illumination and increased human traffic is not expected to considerably increase, compared to the existing impacts caused by the marina. - The application was referred to Council's Natural Systems section for assessment and additional information was requested in relation to insufficient assessment of impacts to seagrass and threatened shorebirds. Upon submission of the additional information, it was considered that the proposal would not result in adverse impacts to the biophysical and ecological environment, or any natural coastal processes subject to conditions of consent.
<p><u>Bushfire impacts</u></p> <ul style="list-style-type: none"> - The proposal has not addressed bushfire impact and accessibility requirements for fire fighting vehicles/equipment. 	<ul style="list-style-type: none"> - 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. - The DA should have stated the proposed development is within a declared Aboriginal place. - The archaeologist has incorrectly identified the boundary of Lot 322 DP 636840 and incorrectly identified the boundary of the Aboriginal Place. This document must be corrected to represent the true boundaries and sent to all the 	<ul style="list-style-type: none"> - There are no proposed works within the RE1 zone. 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). However, demolition of structures is proposed along the boundary of the development site and the Aboriginal Place. - An ACHAR and Archaeological Assessment has been prepared by the applicant and referred to HNSW. The HNSW review found that the ACHAR assessment was inadequate and additional information was requested. The additional information remains outstanding, and as a result the application is recommended for refusal. - The DA did not originally identify that works were located in the Aboriginal Place. Following consultation with HNSW, it was identified that some proposed

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<p>recipients of the Archaeological Assessment Report and ACHAR before the DA can be properly assessed.</p> <ul style="list-style-type: none"> - The proposal is inconsistent with the Soldiers Point Aboriginal Place Plan of Management. - The ACHAR indicates that there is not a unanimous agreement from all registered Aboriginal Parties (RAP), therefore the application should be rejected. - RAPs have been given misleading information. 	<p>demolition works were located along the boundary of the Aboriginal Place.</p> <ul style="list-style-type: none"> - The boundary of Lot 322 DP 636850 and the Aboriginal Place are identified correctly in the ACHAR and Archaeological report. No issues regarding the identification of these boundaries have been identified by HNSW in their review of the application for GTAs. - The ACHAR prepared by the applicant considers the Plan of Management for the Soldiers Point Aboriginal Place. No inconsistency with the Plan of Management has been specifically identified by HNSW in their review of the application for GTAs. - HNSW has not specifically identified that any issues regarding consultation with the RAPs, in their review of the application for GTAs.
<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 should the application be approved. A condition could be included requiring the preparation of a Construction Environmental Management Plan to be submitted for approval by Council's Natural Systems 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 	<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

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<p>facilitating the use of members only for private benefit.</p> <ul style="list-style-type: none"> - The loss of the slip way is unacceptable as there are few left in the area. - The proposal does not have a commercial business case. 	<p>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.</p> <ul style="list-style-type: none"> - The proposal will only encroach on a small portion of publicly owned land 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. - The demand for slipways in the local area is not a relevant planning consideration in DA assessment. - The commercial viability of the development is not a relevant planning consideration in DA assessment.
<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 development is significantly reduced in scale and of a different nature. There is no proposal to expand the existing marina facilities encompassing additional berths. Impacts relating to fauna and flora, coastal/tidal hydrological environments, aquaculture, traffic and car parking have assessed throughout this report and found to be acceptable. Adequate aboriginal cultural heritage assessment remains outstanding and is a reason for the recommendation for refusal.
<p><u>Liquor licencing</u></p> <ul style="list-style-type: none"> - There is no need for more licensed premises in the Soldiers Point Area. 	<ul style="list-style-type: none"> - Liquor licensing is not a relevant matter for consideration in relation to the proposed development. Liquor licensing is managed by the NSW Office of Liquor and Gaming.
<p><u>Impact to Community project - Revetment work – Soldiers Point.</u></p>	<ul style="list-style-type: none"> - The revetment rock wall aims to stabilise localised erosion to the north of the

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<ul style="list-style-type: none"> - The revetment wall proposed to address erosion between the Soldier's Point Boat Ramp and The Marina and construction of the pedestrian pathway around the point will likely be compromised by the development. 	<p>marina. The proposed alterations and additions to the marina are located to the south and would not compromise the functioning of the revetment wall.</p>
<p><u>Adequacy of Information Provided to Port Stephens Council, Consultants and External Agencies</u></p> <ul style="list-style-type: none"> - The proponent may intend dragging machinery and materials onto the site from the adjacent waterway using the winch housing on the old slipway site that is to be retained. The EPA should be made aware of this. - Insufficient information sent to DPI Fisheries to make a decision. - Boundaries are listed as approximate in all major reports and no survey has been completed. - Insufficient information has been sent to Port Stephens Council, various consultants and external agencies. 	<ul style="list-style-type: none"> - The architectural plans note that the winch housing is to be retained however, the winch is proposed to be removed. The existing slipway is to be demolished and therefore it would not be possible to use this winch in any case. - There are no external approvals required which fall under the governance of the EPA therefore referral is not necessary. - All documents received with the lodgement of the application were sent to the external referral authorities, including Fisheries. DPI Fisheries did not request further information and concluded that approval under the Fisheries Management Act 1994 was not necessary for the proposed development. - The specialist reports supporting the application and assessment from Council and external agencies have been undertaken based on the architectural plans submitted with the application. The plans clearly show the siting of the development with respect to lot boundaries. A standard condition of consent could be included requiring the proponent undertake a peg out survey to confirm the siting of the building is in accordance with the approved plans prior to the issue of a Construction Certificate.
<p><u>Impacts to local residents by way of noise disturbances and impacts to amenity</u></p> <ul style="list-style-type: none"> - Construction of the development will impact residents significantly by reason of noise, vibration, odour, fumes, dust, traffic - Ongoing operation of the development will result in impacts relating to noise due to increased number of patrons and frequency waste disposal. 	<ul style="list-style-type: none"> - Construction related amenity impacts can be managed through the preparation of a Construction Environmental Management Plan, which could be included as a condition of consent. - The proposal is to be utilised by users of the existing boat mooring facilities which are not proposed to be expanded under the current application. For this reason, impacts relating to noise will not be exacerbated in this regard. Waste disposal is not expected to significantly increase as a result of the proposal, such that impacts relating to noise would be exacerbated.

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<p><u>Lot and zone boundary identification</u></p> <ul style="list-style-type: none"> - There are discrepancies in lot numbers in the documents provided. - No site survey has been undertaken. - The application form misleadingly states that the proposed works are to be situated on the area previously used for a slipway. - The concept stormwater plans show stormwater pit 2 is located on Lot 322 in DP 636840, land gazetted as an Aboriginal Place and zoned RE1 - Public Recreation. 	<ul style="list-style-type: none"> - It was identified that a lot number was incorrectly identified on the plans originally submitted to Council. The lot in question is Lot 321 DP 636840. The minor error has been rectified on a new plan set. - The development plans submitted with the application clearly show the siting of the development with respect to lot boundaries. - A standard condition of consent could be recommended requiring the proponent undertake a peg out survey to confirm the siting of the building is in accordance with the approved plans prior to the issue of a Construction Certificate. - The applicant's statement that the works are situated on the area previously used as slipway are accurate. As indicated on the proposed development plans, the proposal is primarily located in this area with only some components extending to areas adjacent the slipway. The statement is not considered to be misleading. - The concept plans confirm that stormwater pit 2 is located on Lot 322 DP 636840, however this lot is only partly covered by the RE1 Public Recreation Zone and Aboriginal Place. The Stormwater pit is located in the portion of Lot 322 DP 636840 which is zoned B1 – Neighbourhood Centre and is not located within the Aboriginal Place. This can be viewed when comparing the stormwater plans against the zone mapping and Aboriginal Place boundary.
<p><u>Conflict of interest</u></p> <ul style="list-style-type: none"> - Port Stephens Council (PSC) should recuse itself and refer the application to an independent body due to conflicts. - PSC Acts as authorised agent for the Crown Lands Department administering Leases for the Marina occupied land. - PSC has identified itself with aims of increasing employment in the area. To do so, PSC encourages business establishment with competitive advantages. - PSC has a duty of care for the environment. This duty may be in conflict with some types of development, particularly development of this nature in a coastal zone. - PSC has a duty of care for the effective 	<ul style="list-style-type: none"> - The proposal does not meet any of the relevant thresholds for referral and determination by a Regional Planning Panel or Independent Planning Commission. - Owners consent for the application has been granted by Council's Asset section for those lots under Council ownership. Owners consent has been received from Crown Land for the areas under Crown ownership. In addition, the application was referred to Crown Land, providing opportunity to comment on the proposed development, in response no objection was made. - PSC aims relating to promoting employment in the area are not relevant

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<p>management of Aboriginal and Historical heritage.</p> <ul style="list-style-type: none"> - An employee on PSC staff appears to have made enquiries or decisions about the Marina proposal both while working in the Planning Department of PSC and later, as an employee of Perception Planning. 	<p>matters for consideration relating to the DA.</p> <ul style="list-style-type: none"> - The environmental impacts of the development have been found to be acceptable as outlined elsewhere in this report. - Impacts from the development relating to Aboriginal heritage remain unresolved, due to the insufficient information being submitted with the application. As a result, the application is recommended for refusal. - A former Council staff member did work on the application before leaving to work in private industry. No determination of the application was made prior to the staff member leaving. Nonetheless, this is not a relevant assessment consideration.
<p><u>Staging</u></p> <ul style="list-style-type: none"> - A future stage may be incorporated in the development with an accommodation/residential component. 	<ul style="list-style-type: none"> - No staging of the application is proposed as part of this DA. - There is no accommodation or residential accommodation proposed as part of this DA.
<p><u>Dilapidation Reports</u></p> <ul style="list-style-type: none"> - The Preliminary Environmental Screening Report provided with the application recommended a dilapidation report be completed on Council's assets and structures and property owners be asked to confirm that the reports present a fair record of existing. There is no evidence to show this has been carried out. 	<ul style="list-style-type: none"> - A standard condition could be recommended requiring a dilapidation report be carried out prior to the commencement of works, in line with the recommendation of the Preliminary Environmental Screening Report. Notification of this requirement to neighbouring landowners is not required as part of the development application.
<p><u>Rezoning and reclassification of Land in 2016</u></p> <ul style="list-style-type: none"> - It cannot be determined if the reclassification of a portion of Lot 322 DP 636840 in 2016 was carried out in accordance with the Soldiers Point Aboriginal Place Plan of Management. 	<ul style="list-style-type: none"> - The process undertaken to reclassify Lot 322 DP 636840 in 2016 is not a relevant consideration for this DA.
<p><u>Public Interest</u></p> <ul style="list-style-type: none"> - The proposal is not in the public interest. 	<ul style="list-style-type: none"> - With the exception of the potential impacts to Aboriginal heritage that have at this time, not been demonstrated to be acceptable, the proposal is considered to be an appropriate addition to the existing club building and the overall existing marina development generally, providing improved services to those boat users, utilising the moorings. 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.

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	<ul style="list-style-type: none">- The developments likely environmental impacts have been found to be acceptable or can be adequately managed through conditions should the application be approved to ensure adverse effects are appropriately mitigated.
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s4.15(1)(e) – The public interest

With the exception of the potential impacts to Aboriginal heritage at this time not being demonstrated as being acceptable, the proposal is considered to be an appropriate addition to the existing club building and the overall existing marina development, providing improved services to those boat users, utilising the moorings. It 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.

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