

Development Application No.2014.430

For Cattle Bay Marina

RESPONSE TO SUBMISSIONS

**Submitted to Bega Valley Council
on behalf of Eden Cattle Bay Marina Pty Limited**

10 April 2015

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Construction Environmental Management Plan prepared by Royal Haskoning DHV

Operational Environmental Management Plan prepared by Royal Haskoning DHV and Advanced Marina Management Pty Ltd

1. INTRODUCTION

This report provides a response to issues raised in submissions during the public exhibition and notification of Development Application No.2014.430 for a proposed marina at Cattle Bay Eden. A total of 34 submissions have been received and addressed in this report including:

- Bega Valley Council letter;
- Agency submissions from the following:
 - Port Authority of New South Wales;
 - Local Land Services – South East;
 - Roads and Maritime Services;
 - Office of Environment and Heritage;
 - Environment Protection Authority;
 - Department of Primary Industries / Fisheries NSW;
 - Department of Defence;
 - Eden Local Aboriginal Land Council;
 - NSW Department of Planning and Environment;
 - Eden Chamber of Commerce;
 - Office of Water; and
 - NSW Trade & Investment – Crown Lands; and
- Public submissions totalling 21 in number.

This report and the appended specialist consultant reports provide additional information on the proposed marina development including additional management and impact mitigation measures to address the issues raised in the above submissions. The EIS lodged with the Development Application together with the additional assessment information and management plans provided in this response to submissions provide the basis of environmental planning merit on which the Development Application can be supported and granted development consent by planning authorities.

2. MAIN ISSUES RAISED IN SUBMISSIONS

The main environmental planning issues raised in submissions as detailed in the following sections of this report relate to:

- Existing Swing Moorings;
- Cocora Beach;
- Aquatic Ecology;
- Access;
- Sewage Disposal;
- Environmental Impact / Pollution and Management.

A summary of the applicant's response to these main issues is provided below.

2.1 Existing Swing Moorings

The implications of the proposed marina for existing swing moorings in the area of the marina site is raised in Council comments and submissions from Roads and Maritime Services (RMS) and members of the public including existing swing mooring licence holders.

A revised and more detailed Swing Mooring Relocation Strategy is appended to this response to submissions. The strategy identifies the existing swing moorings that will need to be relocated and a number of options available for relocation or alternative berthing of vessels. It also outlines a process for relocation in consultation with existing mooring licence holders. The revised strategy has been prepared in consultation with RMS.

2.2 Cocora Beach

Council's comments and a number of submissions from agencies and the public highlight the recreational value of Cocora Beach and raise concern over potential impacts on the beach from wave reflection off the proposed wave attenuator.

A Supplementary Statement on Wave Attenuator and Potential Impacts prepared by Royal Haskoning DHV is appended to this response to submissions. The statement provides a more focussed assessment on Cocora Beach and finds the wave attenuator will have no significant impact on swell wave direction and energy which form the beach. The statement also demonstrates that the wave modelling uses up to date sophisticated wave modelling methodology and technology, and in the circumstances has a high degree of accuracy and certainty.

2.3 Aquatic Ecology

A number of submissions including from the Office of Environment and Heritage (OEH) and members of the public raise concern over the adequacy of ecological assessments and potential impact on aquatic ecology.

A supplementary report titled Responses to Agency Submissions Relating to Aquatic Ecology prepared by Ocean Environmental Consulting is appended in response to the issues raised in submissions including in particular the submission from OEH. It addresses in detail the adequacy of ecological assessment, potential impacts and proposed management and impact mitigation measures recommended for inclusion in environmental management plans. The supplementary report was prepared by Ocean Environmental Consulting in consultation with OEH.

2.4 Access

Public access to the jetty and beach at Cattle Bay

A number of submissions from agencies and the public have queried whether public access will be retained to the existing jetty and beach at Cattle Bay. The proposed marina development retains public access to the existing jetty and beach at Cattle Bay.

Public foreshore access around Twofold Bay

A number of submissions from the public raise the issue of public access around the foreshore of Cattle Bay and Twofold Bay, and suggest that the proponent of the marina should contribute to the funding and provision of pedestrian paths around the foreshore for approximately 1km or more.

The applicant has dedicated over 6,500sq.m of foreshore land across the extent of Cattle Bay to Council as a public reserve as part of the approved tourist development on the land base which already makes a substantial contribution to public foreshore access around this part of Twofold Bay. The proponent will be rehabilitating this foreshore area as part of the construction of the approved tourist development in the future which will further enhance this contribution which is more than reasonable in the circumstances.

Road access

Council comments and a number of public submissions raise the issue of the adequacy of existing road conditions for the proposed marina development and propose the applicant upgrade approximately 1km of Cattle Bay Road.

Cattle Bay Road is considered to be in adequate condition to provide access for the relatively low level of traffic generated by the proposed development. Proposals in submissions for the proponent to upgrade approximately 1km of roadway are considered excessive and disproportionate to the low amount of traffic generated by the proposed marina, inconsistent with contemporary planning practice, and for the most part do not reasonably relate to the proposed development.

The Assessment of Traffic and Parking Implications prepared by Transport and Traffic Planning Associates (TTPA) in Appendix 15 of the EIS concludes that the traffic generated by the proposed marina in its peak hours of use will be as follows:

- AM peak: 15 vehicles in and 5 vehicles out;
- PM peak: 5 vehicles in and 15 vehicles out;
- Distribution of traffic: 70% to/from the Highway and 30% to/from Cocora Street.

The Assessment by TTPA also finds the following in relation to access provided by existing roads:

“The Cattle Bay Road – Cocora Street route which will provide for all vehicle movements to and from the site is in good condition albeit only having kerb and gutter along some 50% of its length between Mitchell Street and Imlay Street.

This access route remains in the form which provided for the operation of the former cannery with its significant car and truck movements.

The proposed marina will only generate very infrequent movements for large vehicles while the generated car movements will only be a minor fraction of that which occurred when there was a workforce of some 500 persons at the cannery.

It is apparent that the access road and intersections in the vicinity will not require any upgrading to accommodate the construction and operation of the proposed marina.”

Standard planning practice is for new development to upgrade roads generally to the extent of their own property frontage where warranted. The approved land based tourist development on the former cannery site has substantially higher traffic generation than the proposed marina and includes the upgrade of Cattle Bay Road only to the front of the site as shown on the drawing in Appendix 11 of the EIS. The approved land based tourist development with substantially higher traffic generation was assessed and approved as not requiring an upgrade of Cattle Bay Road beyond the extent of the site.

Given the above circumstances, we request that Council exclude the imposition of any condition of consent requiring the upgrade of Cattle Bay Road on the grounds that it is overly onerous and unreasonable given the relatively minor amount of traffic generated by the proposed marina, and given the assessment of the land based tourist development did not require such an upgrade.

Pedestrian and emergency access to and from the proposed marina

Pedestrian access to and from the marina off Cattle Bay Road and proposed car parks will need to be across the public foreshore reserve dedicated to Council by the proponent as part of the approved tourist and residential development on the land base. The applicant is currently negotiating pedestrian and emergency access across the reserve with Council.

2.5 Sewage Disposal

Council comments and a number of submissions from agencies and the public raise concern over potential pollution impacts from a portable sewer disposal system operating on the marina. The proposed portable pump out system is in the opinion of the proponent the superior and more effective option in this particular case and delivers an appropriate level of environmental integrity and service capability for the following reasons:

- The portable pump out carts have a tank of approximately 80 litres which exceeds or is similar to the capacity of most vessel sewage holding tanks anticipated to be berthing at the marina.
- Motivation and incentive for boat owners to use the portable pumpout cart would be high as the service would be proactively provided by marina management direct to vessels, and there would be no need for individual boat owners and operators to manoeuvre their vessels to and from a fixed pump out unit.

- Risk of sewage spill from pump out operations would be minimised by the portable pump out cart being operated by professional marina management staff, and not individual boat owners and operators, and by the portable carts having an automatic pump shutdown on full tanks.
- Energy use and waterway impact would be minimised with the portable pumpout cart being wheeled direct to vessels and not requiring boat engines and movements involved with manoeuvring boats to and from a fixed pump out unit.

The above benefits of a portable sewage pump out cart are particularly relevant and amplified by the circumstances of this case. Twofold Bay is a waterway in which sewage discharge direct from vessels is permissible at certain distances and depths away from the foreshore. As there is no fuel facility in the proposed marina typically provided with a fixed sewage pump out unit, there is little incentive for individual boat owners and operators to manoeuvre their vessels to a fixed sewage pump out facility when they can legally discharge directly into nearby areas of Twofold Bay.

Given the above, the applicant requests that Council re-consider its comments and accept the portable pump out cart system as proposed.

2.6 Environmental Impact / Pollution and Management

Council comments and a number of submissions from agencies and the public raise concern over a range of potential environmental impacts and pollution from the construction and operation of the marina development.

A comprehensive assessment of potential environmental impacts and pollution from the proposed marina is provided in the EIS lodged with the DA and the following supplementary reports and statements appended to this response to submissions:

- Responses to Agency Submissions Relating to Aquatic Ecology prepared by Ocean Environmental Consulting;
- Water Quality Management Plan prepared by Ocean Environmental Consulting;
- Statement on Sediment Quality prepared by Royal Haskoning DHV;
- Acoustic Report prepared by West and Associates Pty Ltd; and
- Air Quality Report prepared by West and Associates Pty Ltd.

The above reports and statements include a range of recommended management and impact mitigation measures for the construction and operation of the marina which have been included in the following new and revised environmental management plan:

- Construction Environmental Management Plan prepared by Royal Haskoning DHV
- Operational Environmental Management Plan prepared by Royal Haskoning DHV and Advanced Marina Management Pty Ltd

It should also be noted that the DA for the marina does not involve any earthworks or significant disturbance to the ground surface on the land based component of the marina development. It will therefore not involve any significant impacts associated with earthworks and soil disturbance on the land base.

3. BEGA VALLEY COUNCIL COMMENTS

Submission and Issue Raised	Applicant's Comment and Response
Legal and practical access	Legal and practical access is being negotiated with relevant Council officers and will not preclude public access to the foreshore reserve.
Swing mooring displacement and relocation	A revised and more detailed Swing Mooring Relocation Strategy is appended and has been prepared in consultation with Roads and Maritime Services (RMS).
Maintenance works existing jetty	<p>A Statement on Refurbishment and Maintenance Works for the Existing Jetty prepared by Royal Haskoning DHV is appended. Maintenance and repair works to the existing jetty include the following subject to a detailed condition assessment to be prepared at construction stage:</p> <ul style="list-style-type: none"> • Repairs and resurfacing of wharf decking and bollards; • Repairs to wharf substructure headstock and girder elements; • Repair and resurfacing of wharf piles. <p>The maintenance and repair works are minor building alterations with minimal environmental impact which are exempt development under <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, Part 2 Exempt Development Codes, Subdivision 27 Minor building alterations (external)</i>.</p> <p>A separate DA would be lodged for any building alteration work on the wharf structure and marina that does not fall within the terms of exempt development.</p>
Geotechnical investigations	The location, configuration and structural integrity of the wave attenuator are highly possible and achievable on the known geology and lithology in Twofold Bay. There are no known geotechnical conditions that would be prohibitive to construction of the marina and wave attenuator. This geotechnical consideration is addressed by Royal Haskoning DHV in Appendix 19 of the EIS, and also in the appended supplementary statement on geotechnical conditions prepared by Royal Haskoning DHV.
Impact on Cocora Beach	A Supplementary Statement on Wave Attenuator and Potential Impacts prepared by Royal Haskoning DHV is appended to this report. The statement provides a more focussed assessment on Cocora Beach as well as Twofold Bay Mussel Farm and finds the wave attenuator will have no significant impact. The statement also demonstrates that the wave modelling uses up to date sophisticated wave modelling methodology and technology, and in the circumstances has a high degree of accuracy and predictability. Amended plans showing the cranked wave attenuator are in the appended supplementary statement.
Environmental Management Plan (EMP)	A revised and more detailed Operational EMP and new Construction EMP are appended to this report.
Sewage pump out	The proposed portable pump out system is in the opinion of the proponent the superior and more effective option in this particular case and delivers an appropriate level of environmental integrity and service capability. The applicant requests that Council reconsider its comments and accept the proposed portable system give the following circumstances of the case.

Submission and Issue Raised	Applicant's Comment and Response
	<p>The portable pump out carts have a tank of approximately 80 litres which exceeds or is similar to the capacity of most vessel sewage holding tanks anticipated to be berthing at the marina. A minimum of two portable pump out carts would be in operation across the marina. The pump out carts would be operated by marina management and proactively taken to vessels in accordance with the provisions of the Operational Environmental Management Plan. In our view the portable system is the superior and more effective option in this case and delivers an appropriate level of environmental integrity and service capability in the following respects:</p> <ul style="list-style-type: none"> - Motivation and incentive for boat owners to use the portable pumpout cart would be high as the service would be proactively provided by marina management direct to vessels, and there would be no need for individual boat owners and operators to manoeuvre their vessels to and from a fixed pump out unit. - Risk of sewage spill from pump out operations would be minimised by the portable pump out cart being operated by professional marina management staff, and not individual boat owners and operators, and due to the portable carts having an automatic pump shut down on full tanks. - Energy use and waterway impact would be minimised with the portable pumpout cart being wheeled direct to vessels, and not requiring boat engines and movements involved with manoeuvring boats to and from a fixed unit. <p>The above benefits of a portable sewage pump out cart are particularly relevant and amplified by the circumstances of this case. Twofold Bay is a waterway in which I am advised sewage discharge direct from vessels is permissible at certain distances and depths away from the foreshore. As there is no fuel facility in the proposed marina typically provided with a fixed sewage pump out unit, there is little incentive for individual boat owners and operators to manoeuvre their vessels to a fixed sewage pump out facility when they can legally discharge directly into nearby areas of Twofold Bay. The portable sewage pumpout cart service would be provided proactively by marina management and give the incentive for boat owners and operators not to discharge into Twofold Bay.</p> <p>For the reasons outlined above, the portable sewage pump out cart system is in our view the more effective and superior sewage disposal system for the proposed marina at Cattle Bay in the particular circumstances of this case. The portable cart system is operated successfully in a number of marinas including Royal Perth Yacht Club - Perth WA, Smiths Spit Marina - Sydney Middle Harbour NSW, and Fergusons Marina - Sydney Middle Harbour NSW.</p> <p>Given the information provided above and attached, the applicant requests that Council re-consider its comments and accept the portable pump out cart system as proposed.</p>
Service infrastructure easements	<p>Where access is available to the services, this can be maintained through a condition of consent without an easement across the temporary land based facility until the approved permanent land based tourist development is constructed. This is the preferred position from the applicant.</p> <p>The applicant has no objection to requirements for access, and easements if deemed necessary by planning authorities, being imposed by conditions of consent for service infrastructure. However, any easements may need to be revised as part of the approved tourist development.</p>

Submission and Issue Raised	Applicant's Comment and Response
Traffic generation / road standards	
<p>- The design and construction standard of Cattle Bay Road would not adequately cater for the likely traffic generating potential of the marina development. Accordingly, the road would require upgrading in accordance with Council's adopted technical specifications to ensure safe two way travel.</p> <p>Council is seeking construction of the following in Cattle Bay Road from the intersection of Cattle Bay Road and Flinders Street, to the southern extent of the proposed access to lot 2 DP 1138056:</p> <ul style="list-style-type: none"> • 6.4 metre wide bitumen sealed road pavement with 1.2 metre wide sealed road shoulder on the eastern side of Cattle Bay Road, • all associated stormwater and subsoil drainage works, • installation of guideposts, protection fencing, pavement markings and signposting to the standards specified in the Road Design Guide published by the NSW Roads and Traffic Authority, • all other works necessary to achieve the above. 	<p>The draft condition proposed by Council for an upgrade to approximately 1km of roadway is considered excessive and disproportionate to the relatively minor amount of traffic generated by the proposed marina, and therefore for the most part does not reasonably relate to the proposed development.</p> <p>We request that Council exclude the imposition of any condition of consent requiring the upgrade of Cattle Bay Road on the grounds that it is disproportionate to the proposed marina development and unreasonable given the following circumstances of the case.</p> <p>The Assessment of Traffic and Parking Implications prepared by Transport and Traffic Planning Associates (TTPA) in Appendix 15 of the EIS concludes that the traffic generated by the proposed marina in its peak hours of use is as follows:</p> <ul style="list-style-type: none"> • AM peak: 15 vehicles in and 5 vehicles out; • PM peak: 5 vehicles in and 15 vehicles out; • Distribution of traffic: 70% to/from the Highway and 30% to/from Cocora Street. <p>The Assessment by TTPA also finds the following in relation to the access provided by the existing roads:</p> <p><i>"The Cattle Bay Road – Cocora Street route which will provide for all vehicle movements to and from the site is in good condition albeit only having kerb and gutter along some 50% of its length between Mitchell Street and Imlay Street.</i></p> <p><i>This access route remains in the form which provided for the operation of the former cannery with its significant car and truck movements.</i></p> <p><i>The proposed marina will only generate very infrequent movements for large vehicles while the generated car movements will only be a minor fraction of that which occurred when there was a workforce of some 500 persons at the cannery.</i></p> <p><i>It is apparent that the access road and intersections in the vicinity will not require any upgrading to accommodate the construction and operation of the proposed marina."</i></p> <p>Standard planning practice is for new development to upgrade roads generally to the extent of their own property frontage. The approved land based tourist development on the former cannery site has substantially higher traffic generation than the proposed marina and includes the upgrade of Cattle Bay Road only to the front of the site as shown on the drawing in Appendix 11 of the EIS. The approved land based development with substantially higher traffic generation was assessed and approved as not requiring an upgrade of Cattle Bay Rd significantly beyond the extent of the site.</p> <p>Given the above circumstances, we request that Council exclude the imposition of any condition of consent requiring the upgrade of Cattle Bay Road on the grounds that it is overly onerous and unreasonable given the relatively minor amount of traffic generated by the proposed marina, and given the assessment of the land based tourist development did not require such an upgrade.</p>

Submission and Issue Raised	Applicant's Comment and Response
<p>- Due to the location of services, access to site would need to be relocated to the north of the existing entry point.</p>	<p>The proposed marina retains the same access as was provided to the previous industrial cannery use on the site on a temporary basis until the approved land based tourist development is constructed. Once the approved land based development is constructed, the vehicle access will be relocated and provided in accordance with the approved plan shown in Appendix 11 of the EIS. There is no need to relocate the temporary access relevant to the services at this time as it is exactly the same as for the previous cannery.</p>
<p>- Further, the works would also have to include the upgrade/construction of a suitable road access to Council's reserve over the track in use adjacent the eastern boundary of the site and reserve. The upgrade would facilitate the construction of a formalised carpark area designated for use by the general public.</p>	<p>The proposed marina has sufficient parking areas on the existing concrete slabs on the site for public parking until the approved land based tourist development is constructed. A total of 97 car parking spaces are proposed which is more than the 35 parking spaces needed for the proposed marina (see Assessment of Traffic and Parking Implications prepared by Transport and Traffic Planning Associates in Appendix 15 of the EIS) and provides over 60 parking spaces for visitors to Cattle Bay.</p> <p>The approved land based tourist development includes an agreed public parking area on the land owned by Council on the eastern side of Cattle Bay Road. This will be delivered by the applicant in accordance with the terms and conditions of the approved land based tourist development.</p> <p>Given the ample public parking above, the Council proposal for a further additional second public car park is not warranted or feasible, and we request it be omitted from any DA consent.</p>
<p>Stormwater drainage</p>	<p>The approved land based tourist development includes a comprehensive stormwater management plan to service it. This will be implemented as part of the future approved tourist development.</p> <p>The DA for the proposed marina is for temporary use of the existing concrete slab on the land based site for car parking and small temporary buildings servicing the marina. The DA is to utilise the existing stormwater management infrastructure on the land based site on a temporary basis until the approved tourist development is constructed on the land based site, and supplement it with an additional gross pollutant trap. It is not feasible to construct any complete new stormwater infrastructure for the temporary land based marina facility only to have it demolished when the approved tourist development is constructed.</p>
<p>Security deposit</p>	<p>The applicant requests that Council provide further information on the purpose/s for which a security deposit is to be sought and the amount of security deposit intended prior to issuing a notice of DA determination.</p>
<p>Section 64 and 94 Contributions</p>	<p>Section 64 Contributions - A Water and Wastewater Servicing Strategy prepared by Royal Haskoning DHV is appended to this report. It provides the reasonable engineering basis on which the contribution amount can be reasonably calculated.</p> <p>Section 94 Contributions - The applicant requests that S.94A contributions be waived for the proposed marina on the following reasonable grounds:</p> <ul style="list-style-type: none"> - the applicant has provided a massive material public benefit in the form of dedicating over 6,500sq.m of prime waterfront land to Council as a public reserve which has a value far in excess of the S.94A contribution levy that should be credited;

Submission and Issue Raised	Applicant's Comment and Response
	<ul style="list-style-type: none"> - the marina involves the upgrading and formal opening of the jetty wharf for public access which provides a material public benefit that can reasonably be credited against the S.94A contribution levy; - the marina does not generate any significant demand for the infrastructure and facilities in the S.94A Contributions Plan.
Access to land based facilities	<p>The DA plans prepared by Black architects included in Appendix 6 of the EIS include the following in the temporary accommodation schedule – Accessible Unisex Facility with 1 WC, 1 handwash basin, 1 shower, hand dryer and other accessories; Female WC with 2 cubicles, 2 handwash basins in vanity counter, hand dryer and other accessories; Male WC containing 1 WC cubicle, 2 urinals 2 handwash basins in vanity counter hand dryer and other accessories.</p> <p>The applicant has no objection to a condition of consent being imposed to require an additional toilet and/ or shower.</p>
Bilge water and vessel maintenance	<p>The marina rules on management of bilge water, maintenance and repairs are included in the enclosed Operational Environmental Management Plan. This will be enforced by the marina operator and management staff.</p>
Emergency access	<p>The applicant has no objection to a condition of consent requiring access gates from pontoon arms to be incapable of being locked from the water side (path of travel in an emergency). There are numerous models of gates capable of being locked in only one direction, and there is no need for the applicant to select and provide details on the particular make, model and specifications of gates at this DA stage. A condition of consent adequately addresses Council's concern.</p>
Fire fighting	<p>The Cattle Bay Marina Water and Wastewater Servicing Strategy is included in Appendix 20 of the EIS and provides information on the proposed fire fighting measures sufficient for the DA stage. A supplementary strategy is also appended. Any further engineering details can be required as conditions of consent and provided at construction stage.</p>
Pontoon / ramp surfaces	<p>The applicant has no objection to a condition of consent being imposed requiring pontoon/ ramp surfaces to be non-slip. There are numerous types of non-slip surfaces and there is no need for the applicant to select and provide details on the particular specifications of the non-slip surface at this DA stage. A condition of consent adequately addresses this concern.</p>
Heritage	<p>The baths have a panoramic view and outlook across most of Twofold Bay primarily from the southwest to south to southeast. Cattle Bay is not visible from the baths, and only the very ends of Arms B and C in the proposed marina will be visible from the baths at a distance of 150m. The proposed marina is entirely consistent with the maritime history of Twofold Bay.</p> <p>Given the above circumstances, the proposed marina is considered to be compatible with the context and setting of the baths, and will not have a significant effect on the heritage significance of the baths.</p>
General	<p>A response to the issues raised in agency submissions is provided below.</p>
Existing structures and infrastructure	<p>The rehabilitation and development of the foreshore area including the demolition of existing building structures on it is the subject of the first stage of the approved land based tourist development. This does not form part of the marina DA.</p>

4. AGENCY SUBMISSIONS

Submission and Issue Raised	Applicant Comment and Response
Port Authority of New South Wales	
Construction work disturbing the bed of a special port requires Harbour Master approval under the Management of Waters and Waterside Lands Regulation. Harbour Master	Noted. The proponent will consult the Harbour Master and seek approval at the pre-construction stage after DA determination.
Local Land Services – South East	
Development is excluded from the Native Vegetation Act.	Noted.
Roads and Maritime Services	
Condition of consent is required for a network of Aids to Navigation to be installed and approved by RMS.	Agreed.
Concern over loss of navigable waters and amenity to boating community and existing mooring licence holders.	A revised and more detailed Mooring Relocation Strategy is appended and has been prepared in consultation with RMS.
Concern over mechanism proposed to deal with displaced mooring licence holders.	
Concern over impacts of deflected wave action from wave attenuator on vessels and waterside land / foreshore.	A supplementary statement on wave modelling prepared by Royal Haskoning DHV is appended to clarify the methodological accuracy of the modelling.
A collective interagency response should occur.	An Inter-agency response is provided by the agency submissions addressed in this report as part of the normal statutory DA process in accordance with EP&A Act.
No agent shall be exempted from relevant legislation.	Agreed. The proposal is to meet relevant legislative requirements.
Office of Environment and Heritage	
Any future DA for Precinct A will need to consider impact of coastal hazards and sea level rise.	Noted.
Aboriginal cultural heritage – Description and consideration of impacts on Aboriginal heritage is not adequate and does not reflect AHA study in the EIS. AHA study was prepared in 2007 for Part 3A Application and does not reflect legislative requirements for current DA. AHA study in the EIS states that there remains moderate to high potential for heritage to occur in the form of subsurface deposits of artefacts on parts of the site not entirely impacted by recent land use, and there	The AHA report was prepared for the large scale mixed tourist and residential development approved under Part 3A which covers a large area including land previously undeveloped in a near native bushland state. The recommendations in the AHA report, including for an AHMP to be prepared in consultation with the local Aboriginal land council, are for the approved large scale mixed tourist and residential development and are particularly relevant to the undeveloped land base in a near

Submission and Issue Raised	Applicant Comment and Response
<p>is potential for further impacts on heritage values. Although potential for skeletal remains is low, it cannot be discounted. AHA study recommends an AHMP be prepared in consultation with the local Aboriginal land council and this is a condition of the Part 3A approval. Any impacts that may occur to Aboriginal will require stop work and permit from OEH.</p> <p>OEH requires clarification as to potential impacts and mitigation measures for current DA including consideration given to mapping areas already impacted by recent land use to justify lack of additional consideration in the DA, and mapping location of previously recorded Aboriginal site "Cattle Bay 1".</p> <p>Given the project and development footprint has changed from the Part 3A Approval, OEH requires clarification as to the process of consultation with the Aboriginal community on the current DA.</p> <p>Bundian Way was recorded and gazetted in January 2013 on the State Heritage Register and this should be reflected in the EIA.</p>	<p>native bushland condition. The recommended management actions in the AHA report are not particularly relevant to the current DA for the marina which is affecting only a land base that has been subject to intensive urban development in the relatively recent past. The land based component of the current marina DA is utilising the existing concrete slab from the previous industrial use on the site. No earthworks or significant disturbance of the surface of the land base is proposed in the current marina DA.</p> <p>The relevance of the AHA report to the current DA for the marina is in the research and findings of heritage significance on the site and the conclusions on potential for archaeological deposits. These findings and conclusions remain relevant, including in particular the conclusion that there is low potential for deposits on parts of the site impacted by past development which are the only parts utilised in the proposed marina development.</p> <p>Given the proposed marina development is affecting only land that has been subject to intensive urban development (ie. existing concrete slab) and involves no earthworks or subsurface disturbance, there is no potential for archaeological deposits to be disturbed, and no need for an AHMP to be prepared or for consultation with the local Aboriginal land council on this current DA. The construction of the marina will be subject to existing standard legislative requirements relating to protection of any archaeological findings.</p> <p>The proposed marina development is a stand-alone DA, and is not subject to the terms and conditions of the Part 3A Approval for a mixed tourist and residential development on the land base of Cattle Bay.</p>
<p>Geotechnical conditions – There is no discussion on method of piling into rock and impact on flora and fauna.</p>	<p>This matter is addressed in the appended Responses to Agency Submissions Relating to Aquatic Ecology prepared by Ocean Environmental Consulting.</p>
<p>Bilge water pump out – There are no diagrams showing location of floating boom and no discussion of entanglement risk for marine fauna.</p>	<p>This matter is addressed in the appended Responses to Agency Submissions Relating to Aquatic Ecology prepared by Ocean Environmental Consulting.</p>
<p>Relocation of swing moorings – The new locations are not shown and the impact on marine fauna needs to be included in the assessment including in particular the increased area no longer available to marine mammals and entanglement risk.</p>	<p>This matter is addressed in the appended Swing Mooring Relocation Strategy prepared by Royal Haskoning DHV and appended Responses to Agency Submissions Relating to Aquatic Ecology prepared by Ocean Environmental Consulting.</p>

Submission and Issue Raised	Applicant Comment and Response
Elevated water levels – There is no discussion of the impacts of potential sea level rise on the terrestrial component of the DA.	The land based component of the DA has temporary facilities to support the proposed marina until the approved tourist development is constructed with permanent buildings that meet relevant water levels. A flood evacuation plan is provided for the temporary land based marina facility in the appended Operational Environmental Management Plan.
Flooding – If the concrete slab is at risk of flooding, this should be addressed now rather than via separate DA in the future. Consideration on page 89 is not well addressed and not apparent whether it meets Council's obligations on floodplain management.	
Environmental management plan – An EMP is required for construction and operation.	A new Construction EMP and revised Operational EMP are appended to this report.
Flora and fauna – Impacts cannot be assessed as there has not been adequate survey particularly on sea grass beds, use of the bay by migratory waders or threatened shore birds, and migratory marine fauna.	This is addressed in the appended Responses to Agency Submissions Relating to Aquatic Ecology prepared by Ocean Environmental Consulting.
Consultation – OEH was not consulted in the preparation of the EIS.	OEH has been consulted by Ocean Environmental Consulting in the preparation of the appended Responses to Agency Submissions Relating to Aquatic Ecology.
Aquatic Ecology Assessment:-	The matters raised under this heading of Aquatic Ecology Assessment in the OEH submission are addressed in the Responses to Agency Submissions Relating to Aquatic Ecology prepared by Ocean Environmental Consulting appended to this report.
Hydrographic mapping and marine mammal risk report – Wave model runs should have also included 100 year ARI which may have more bearing on potential impacts to Cocora Beach and performance of wave attenuator.	The wave modelling takes into account water level rises. The ambient and recreational value of Cocora Beach is driven by ambient swell conditions rather than one off rare storm events.
Environment Protection Authority	
Air assessment is required particularly for diesel boat engines.	An air quality assessment prepared by West & Associates Pty Ltd is appended to this report.
Noise and vibration assessment is to be completed for the project..	A noise assessment prepared by West & Associates Pty Ltd is appended to this report.
Water quality assessment should be provided.	<p>A Water Quality Management Plan prepared by Ocean Environmental Consulting is appended to this report and includes an assessment of potential water quality impacts and mitigation measures.</p> <p>A Statement on Sediment Quality prepared by Royal Haskoning DHV is appended and confirms there is no contamination in existing sediments on the bed of the bay exceeding ecological standards.</p>

Submission and Issue Raised	Applicant Comment and Response
Environmental management plan needs more detail particularly on how goals will be achieved and monitoring.	A revised and more detailed Operational EMP and new Construction EMP are appended to this report.
Department of Primary Industries / Fisheries NSW	
Department has concerns about longer term operational impacts on the aquatic environment, aquaculture and recreational fishing.	These concerns are addressed in the EIS lodged with the DA, and in the additional reports and statements appended to this response to submissions including the Supplementary Statement on Wave Attenuator and Potential Impacts, Construction Environmental Management Plan, Operational Environmental Management Plan, Responses to Agency Submissions Relating to Aquatic Ecology, Water Quality Management Plan, and Statement on Sediment Quality.
Completion of all approved and proposed marinas would result in berths in Twofold Bay for 637 standard boats, 3 super yachts, 260m cruise ship as well as commercial fishing fleet which would seem to be a substantial oversupply of boating facilities particularly given total potential market identified is 558 vessels. Commercial viability and financial capacity of operators to implement best practice management is a concern in the long term.	The proposed marina is viable and supported by business case fundamentals described in the Eden Marina Project Report included in Appendix & of the EIS.
DPI / Fisheries NSW has no objection to issue a permit under Part 7 of the Fisheries Management Act subject to eight General Terms of Approval.	The applicant agrees to the eight general terms of approval
DPI/ Fisheries NSW suggests 12 conditions of consent to address its concerns.	<p>The applicant has no objection to the suggested conditions of consent other than Conditions 4 and 10.</p> <p>Condition 4 is not reasonable as it does not allow for seagrass friendly moorings which can be used with minimal impact.</p> <p>Condition 10 is agreed to the extent that the existing jetty will have public access. Public access beyond the jetty at all times of the day is not feasible due to marina management responsibilities and the need for security of vessels and marina users.</p>
Department of Defence	
Marina is unlikely to cause disruptions to Defence activities and, Defence does not object to the DA.	Noted.

Submission and Issue Raised	Applicant Comment and Response
Eden Local Aboriginal Land Council	
Only cursory assessment of need for safe public access to Cocora Beach and Snug Cove. This is part of a link in the Bundian Way Story Trail. Development at Snug Cove and Cattle Bay should be required to provide adequate public pedestrian access as a mandatory condition of consent.	The applicant has dedicated over 6,500sq.m of foreshore land across the extent of Cattle Bay to Council as a public reserve as part of the approved tourist development on the land base which already makes a substantial contribution to the Bundian Way and enhancement of public foreshore access around this part of Twofold Bay. The proponent will be rehabilitating this foreshore area as part of the construction of the approved tourist development in the future which will further enhance this contribution which is more than reasonable.
Council also needs to consider developing these safe foreshore public access walkways.	
Eden LALC has insufficient funds to develop these walkways. Responsibility for the development of foreshore walkways should be funded and constructed as part of a partnership arrangement between developers, NSW Government and Council.	
NSW Department of Planning and Environment	
No objection to proposed marina.	Noted.
DPE trusts that Council is satisfied that the Director General's requirements have been met, and submissions from State agencies considered.	The matters raised in the DGRs are addressed in the EIS and in this response to submissions.
The marina has the potential for economic benefits through investment and employment opportunities and may act as a catalyst to encourage further development at Snug Cove and Eden town centre.	Agreed.
Eden Chamber of Commerce	
No in-principle objections.	Noted
Safe Harbour project should not be subservient to Cattle Bay proposal or dependent on it.	Noted.
Further examination of wave attenuator should address sand retention rather than just beach alignment.	Refer to the Supplementary Statement on Wave Attenuation and Potential Impacts appended to this report.
There is no provisions for an on-site boat launching ramp which should be rectified.	An on-site boat launching ramp is not proposed as part of the marina DA.
Any consent should have conditions to the effect that: <ul style="list-style-type: none"> boat maintenance and repairs of a mechanical (noisy) nature must not be carried out beyond specified daytime hours; 	Agreed.

Submission and Issue Raised	Applicant Comment and Response
<ul style="list-style-type: none"> • lights more than 2m in height or likely to spill or cause glare are to be prevented; • public address system is to be banned. 	
Office of Water	
NSW Office of Water has no objection to the proposal and, for the purposes of the Water Management Act 2000, a controlled activity approval is not required. As the watercourse on the waterfront land is piped, it is exempt from the Act in relation to controlled activities. No approvals from the Office of Water are necessary.	Noted.
NSW Trade & Investment – Crown Lands	
On 16 November 2014, Crown Lands provided Landowner's Consent to the application. The matters outlined in that letter are still of relevance and Council should consider this in its assessment of the application.	Noted.
The EIS at Section 2.12 outlines that Crown Lands has agreed to directly negotiate with the proponent. Whilst conditional approval was granted previously by the LPMA, the conditions precedent to enacting that approval have not been met. Crown Lands is currently considering a new request from the proponent to enter into direct negotiations as a result.	Noted. The applicant is currently working with Crown Lands to meet requirements for direct negotiation for the lease of the land, and is able to meet the conditions.
Contrary to the information provided in the EIS, no Lease is in place over the Jetty Structure. There is a Licence in place. Any Lease of the Jetty and conditions that may be attached to the same, including public access, will be considered in any Lease negotiations that may take place for the whole development.	Noted and understood. The applicant is currently working with Crown Lands to finalise and formalise the tenure arrangements for the proposed marina development including the existing jetty.
The EIS outlines that unspecified refurbishment works will be carried out to the Jetty. Crown Lands queries how Development Consent can be granted to such when the work to be carried out is not specified. Should Direct Negotiation be entered into with the Proponent, the exact nature of works associated with the refurbishment and maintenance of the Jetty will be determined as part of those negotiations.	<p>A Statement on Refurbishment and Maintenance Works for the Existing Jetty prepared by Royal Haskoning DHV is appended.</p> <p>Maintenance and repair works to the existing jetty include the following subject to a detailed condition assessment to be prepared prior to construction stage:</p> <ul style="list-style-type: none"> • Repairs and resurfacing of wharf decking and bollards; • Repairs to wharf substructure headstock and girder elements; • Repair and resurfacing of wharf piles.

Submission and Issue Raised	Applicant Comment and Response
	<p>The maintenance and repair works are minor building alterations with minimal environmental impact which are exempt development under <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, Part 2 Exempt Development Codes, Subdivision 27 Minor building alterations (external)</i>.</p> <p>A separate DA would be lodged for any building alteration work on the wharf structure and marina that does not fall within the terms of exempt development.</p> <p>Notwithstanding the above, all work would require the consent of the landowner which is Crown Lands in this case.</p>
The EIS needs to be updated to refer to the amended LEP maps.	The planning controls applying to the site and its surrounds as described in Section 4.2.4 of the EIS remain correct.
<p>Irrespective of any development consent, or any approval given by other public authorities, work or occupation of Crown land cannot commence without a current tenure from the NSW Trade & Investment, Crown Lands, authorising such work or occupation.</p> <p>Subject to development consent being issued, a lease application for work and occupation of structures located on Crown Land will be required to be submitted to Crown Lands by Eden Resort Hotels. Following the submission of a lease application, a draft lease agreement with appropriate special conditions will be prepared.</p>	Noted. The applicant will seek tenure from Crown lands as required.

5. PUBLIC SUBMISSIONS

Issue Raised	No. Subs	Comment and Response
Support expressed for proposed marina and benefits for Eden from it	7	Noted.
Enhances / compliments Snug Cove precinct and catalyst for future growth	1	Agreed.
Provides facilities and infrastructure for a wide range of stakeholders	1	Agreed.
Much needed boost to Eden's economy and employment and tourism that will continue into the future.	3	Agreed.
Batemans Bay marina is overloaded and proposed marina is overdue for Eden.	1	Noted.
Proponent's marine structural engineers have local knowledge.	1	Agreed.
Marina supports maritime culture of Eden.	1	Agreed.
Ticks all boxes – environmental, social, economic	2	Agreed.
Access	3	
Access link between marina and Eden town centre to facilitate social and economic benefits to the town.	1	The suggested construction of Chandos Street pathway is not required by the proposed marina development and not reasonably related to it.
Foreshore boardwalks and footpaths in Port of Eden Masterplan should will hopefully come to fruition through conditions of approval and S.94 developer contributions	1	The applicant has dedicated over 6,500sq.m of foreshore land across the extent of Cattle Bay to Council as a public reserve as part of the approved tourist development on the land base which already makes a substantial contribution to the Bundian Way and enhancement of public foreshore access around this part of Twofold Bay. The proponent will be rehabilitating this foreshore area as part of the construction of the approved tourist development in the future which will further enhance this contribution which is more than reasonable.
Pedestrian connection to and from Cocora Beach should be formalised and enhanced by the proposed marina development.	1	

Issue Raised	No. Subs	Comment and Response
Not conveniently accessible to ambulance and local health services due to steep terrain and absence of a pedestrian network.	1	The site of the proposed marina has sufficient road access for emergency services as described in the Assessment of Traffic and Parking Implications prepared by Transport and Traffic Planning Associates (TTPA) in Appendix 15 of the EIS from which there will be pedestrian access onto the marina.
A shame if 24 hour public access on the jetty for recreational fishing is curtailed.	2	The DA proposes to retain public access to the jetty.
Details are not provided on public access to the beach, foreshore and jetty, and for the disabled.	1	The DA proposes to retain public access to the beach, foreshore and jetty. The rehabilitation of the beach and foreshore is the subject of the approved tourist development tin the land base and not part of the marina DA. Disabled access will need to be provided in accordance with BCA standards.
Cattle Bay Rd between Mitchell St. and development site is too narrow to support existing traffic loads and needs to be rebuilt, Between the site and Cocora St is dangerous with existing traffic loads. Provision should be made for access around the cliffs of Thomsons Point linking with Victoria Terrace.	1	The Assessment of Traffic and Parking Implications prepared by Transport and Traffic Planning Associates (TTPA) in Appendix 15 of the EIS finds that the traffic generation from the proposed marina is low and the existing access road and intersections in the vicinity will not require any upgrading to accommodate the construction and operation of the proposed marina. The applicant has dedicated over 6,500sq.m of foreshore land across the extent of Cattle Bay to Council as a public reserve as part of the approved tourist development on the land base which already makes a substantial contribution to public foreshore access around this part of Twofold Bay. The proponent will be rehabilitating this foreshore area as part of the construction of the approved tourist development in the future.
Potential for pollution.	2	The assessment and management of potential pollution is addressed in the revised Operational EMP, new Construction EMP and Water Quality Management Plan appended to this report which supplement the assessment of potential pollution in the EIS lodged with the DA.
Litter pollution	1	The revised Operational EMP appended to this report includes measures for managing litter and waste on boats and in the marina.
Pollution from waste on boats	1	
Pollution from self fuelling	1	There is no fuelling facility in the proposed marina.
Impact on Cocora Beach and Point (particularly from wave attenuator).	7	A Supplementary Statement on Wave Attenuator and Potential Impacts prepared by Royal Haskoning DHV is appended to this report. The statement provides a more focussed assessment on Cocora Beach as well as Twofold Bay Mussel Farm and finds the wave attenuator will have no significant impact on swell energy or direction which form the beach. The statement also demonstrates that the wave modelling uses up to date sophisticated wave modelling methodology and technology, and in the circumstances has a high degree of accuracy and predictability.
Silt deposits and scouring change	2	
Cocora point shallows are dolphin feeding area	1	
Interruption of water and sediment circulation in bay.	1	
Safe conditions at Cocora Beach	1	

Issue Raised	No. Subs	Comment and Response
Impact on Twofold Bay Mussel Farm. Provision should be made for compensation if the modelling proves inaccurate and farm sustains damage that makes our operation unviable in its current location	1	
Swing moorings	4	A revised and more detailed Swing Mooring Relocation Strategy is appended and has been prepared in consultation with Roads and Maritime Services (RMS). The revised strategy addresses the issues raised in submissions.
No information provided on new location & related impact on access and convenience for affected boat owners.	1	
Concern over loss of mooring and limited opportunity for acceptable new location. Quarantine Bay not acceptable.	1	
Developer should bear costs of relocating vessels during construction and to new moorings.	1	
Boat owners with moorings be consulted about relocation of moorings.	1	
Timeframe for temporary facilities and land based tourist / residential development. Staging plan with agreed timeframe is suggested as condition of approval.	1	Conditions of consent on the marina DA are not able to impose a timeframe for delivery of the approved tourist development.
Impact on Cattle Bay beach, water quality, fish habitat and recreational resource for fishing and swimming, and traditional food gathering place for aboriginal people.	3	Public access to Cattle Bay beach is maintained and not affected by the proposed marina. Concerns over potential environmental impact on the beach are addressed in the EIS and wave modelling report lodged with the DA, and in the additional reports and statements appended to this response to submissions including the Construction Environmental Management Plan, Operational Environmental Management Plan, Responses to Agency Submissions Relating to Aquatic Ecology, Water Quality Management Plan, and Statement on Sediment Quality.
ERH P/L has shown disregard for / ignores Cattle Bay environment and safety and feelings of the community. None of the objectives have been achieved.	2	ERH has shown regard for the community through ongoing liaison with Council, community groups and members, through the dedication of over 6,500sq.m of foreshore land to Council as a public foreshore reserve, and by conducting a community information session on the marina DA.

Issue Raised	No. Subs	Comment and Response
Lot 4 the foreshore should be rehabilitated as a condition of the DA.	1	Lot 4 (foreshore reserve) is to be rehabilitated as part of the approved tourist development on the land base which forms part of the terms of that approval.
Landowners consent has not been granted by Council for Lot 4. There is no documentation showing landowners consent from Minister for Lands.	1	The applicant is currently negotiating marina access across the foreshore reserve which he previously dedicated to Council. Crown Lands issued landowners consent which is in Appendix 4 of the EIS lodged with the DA.
Quality of marina is at question	1	The marina will meet all relevant standards.
Will the old cannery beach still have public access and areas for swimming?	1	The marina DA retains and does not affect public access to the beach or swimming.
Car parking	1	
How is it possible for car parking to use the existing apron when Council owns the land?	1	The land used for the car park in the marina DA is owned by the applicant.
Government funding	3	
Contradictory statements in DA documents on whether proposal is dependent on public funding.	1	Government funding is understood to be available under certain programs for making harbour conditions suitable and safe for boating including in Twofold Bay. This funding would contribute to the viability of the project and in particular the wave attenuation.
Objection from POEM to statement in EIS that Snug Cove should be considered Stage 2 of the Eden Harbour development because it needs government funding.	1	Noted.
Snug Cove marina	3	
Not feasible to have two marinas	1	The proposed marina is viable and supported by business case fundamentals described in the Eden Marina Project Report included in Appendix & of the EIS.
Snug Cove marina has government funding	2	Noted.
Solution for Cattle Bay is to provide pedestrian access to marina proposed for Snug Cove which has government funding. More cost effective.	2	The proposed marina is cost effective and supported by business case fundamentals described in the Eden Marina Project Report included in Appendix & of the EIS.

Issue Raised	No. Subs	Comment and Response
No tourist development can be more important than the natural asset.	1	The proposed marina respects the natural assets as explained in the environmental assessments documented in the EIS lodged with the DA and in the additional reports, statements and environmental management plans appended to this response to submissions.
Visual impact Has computer modelling been carried out and available for viewing?	1	No computer modelling has been carried out.
Potential sewage and bilge water spills Impact on Twofold Mussel Farm. Any sewerage spill or other contamination emanating from the marina should require the operators to compensate farm for loss of business.	1	The Operational Environmental Management Plan for the marina has been revised to address these issues and is appended to this response to submissions.
Soil and water management Possible liberation of contaminants buried on site needs more than just a gross pollutant trap and be capable of containing fine particles in order to filter out any potentially harmful materials.	1	The DA does not involve any earthworks or significant disturbance to the ground surface on the land based component of the marina development. Therefore, there is no potential for liberation of any contaminants on the land based part of the marina development. A Statement on Sediment Quality prepared by Royal Haskoning DHV is appended to this response to submissions and confirms there are no contaminants in sediments in Cattle Bay.

6. CONCLUSION

This report and the appended specialist consultant reports provide additional supplementary information on the proposed marina development in Development Application No.2014.430 including additional environmental management and impact mitigation measures to address the issues raised in Council comments and submissions from agencies and the public.

The EIS lodged with the Development Application together with the additional supplementary assessment information and management plans provided in this response to submissions provide the basis of environmental planning merit on which the Development Application can proceed to be supported and granted with development consent by planning authorities.

